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November 1, 2022

**VIA ECF**

Hon. Katharine H. Parker  
United States Magistrate Judge  
United States District Court, Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007

The parties' proposed changes to the transcript for the October 25, 2022 case management conference are approved. The transcription service that prepared the transcript is respectfully directed to incorporate the changes. The parties shall send a copy of this order to the transcription service.

**SO ORDERED:**

*Katharine H. Parker*  
HON. KATHARINE H. PARKER  
UNITED STATES MAGISTRATE JUDGE 11/02/2022

**Re: *Averbach et al. v. Cairo Amman Bank*, 19-cv-00004-GHW-KHP**  
**Letter Motion Requesting Approval of October 25, 2022, Transcript Errata**

Dear Magistrate Judge Parker:

At Chambers' instruction, and at the request of the transcription service that prepared the transcript for the October 25, 2022, case management conference, we write jointly on behalf of the parties to request that the Court approve the proposed changes to the transcript attached hereto as a clean document in Exhibit A and a redline in Exhibit B.

Respectfully submitted,

/s/ Dina Gielchinsky

Encls.

cc: All Counsel

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
AVERBACH, et al., : Docket #19cv0004  
Plaintiffs, : : 19-cv-00004-GHW-KHP  
- against - :  
CAIRO AMMAN BANK, : New York, New York  
Defendant. : October 25, 2022  
----- :  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
None				

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

1

PROCEEDINGS

3

2

THE CLERK: Calling case 19cv004, Averbach  
versus Cairo Amman Bank. Beginning with the counsel for  
the plaintiffs, please make your appearance for the  
record.

6

MR. MICHAEL RADINE: Good morning, Your Honor,  
I'm Michael Radine for the plaintiffs. Do you mind if I  
sit to speak?

9

THE COURT: No, go right ahead.

10

MR. RADINE: Thank you. I'm joined by Dina  
Gielchinsky and Ari Ungar.

12

THE COURT: Hi, nice to see you.

13

MR. RADINE: Nice to see you, Your Honor.

14

THE CLERK: And counsel for the defendants,  
please make your appearance for the record.

16

MR. JONATHAN SIEGFRIED: Good morning, Your  
Honor, Jonathan Siegfried, Andrew Peck, Erin Collins, and  
Margaret Civetta.

19

THE COURT: Nice to see everyone. Thank you for  
coming in on this rainy day, and I have your status  
letter from October 20. I thought we could go over some  
of the issues in more detail. The bank has been strongly  
contesting the basis for jurisdiction, and it seems from  
the letter that plaintiffs believe that the evidence  
exchanged thus far supports jurisdiction, but I'd like to

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## PROCEEDINGS

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2 hear a little bit more on that.

3 MR. RADINE: Sure, so, well, I can start there.

4 What we've produced to them so far is 118 transactions,  
5 our records evidencing those transactions, and then we  
6 have about a dozen more that we located that we have  
7 informed them of that we are processing to give them  
8 shortly, in the next day or so. Of those 118, 101 of  
9 those are direct transactions that Cairo Amman Bank  
10 processed through its correspondent account at Citibank  
11 in New York, and 17 are transactions that appear to have  
12 been processed through a nested account they held at Arab  
13 Bank where Arab Bank uses its correspondent account in  
14 New York to process the transaction.

15 That structure of using a nested account to  
16 process a transaction through New York, the  
17 jurisdictional relevance of that structure is currently  
18 sub judice before the Second Circuit in *Spetner v.*  
19 *Palestine Investment Bank* as to whether that meets the  
20 *Licci* standard given that another bank is interposed in  
21 that flow.

22 But, again, of the 118 we've produced so far,  
23 that constitutes 17 of those transactions. The rest are  
24 direct transactions.

25 So they are transactions of significant amounts.

1 PROCEEDINGS

5

2 We've produced a spreadsheet to them. I have a copy if  
3 Your Honor would like to see it here.

4 THE COURT: Sure. If you have it, I'll take a  
5 look.

6 MR. SIEGFRIED: Your Honor, we have objections  
7 to that since we haven't actually been able to even  
8 verify anything regarding these transactions.

9 THE COURT: Okay, I mean this is not evidence,  
10 in any case.

11 MR. SIEGFRIED: I understand it.

12 THE COURT: So I'm not taking it for any  
13 purpose other than this conversation.

14 MR. SIEGFRIED: Sure.

15 MR. RADINE: So this is the spreadsheet we  
16 produced to them, so it does not include the last dozen  
17 that we've located.

18 THE COURT: Okay.

19 MR. RADINE: So the way to read this, obviously  
20 printing Excels is always a bit of a pain.

21 THE COURT: Right.

22 MR. RADINE: It goes, if you will, to the right  
23 and down to the right and then down to the right and then  
24 down. So an entire row is expressed over a page and the  
25 next page, if that makes sense.

1

PROCEEDINGS

6

2 THE COURT: Uh huh.

3 MR. RADINE: So on the top half of the first  
4 page here we start with the nested account transactions.  
5 So you'll see there should be about 17 of them, and you  
6 have the first half of the information on page 1 and the  
7 second half on page 2. And then below that with the  
8 direct transactions, again, first half on page 1, second  
9 half on page 2, and then repeating in that pattern  
10 through the other pages.

11 So we've asked them if they dispute the accuracy  
12 of this, but obviously we're not asking them if they  
13 think this is jurisdictionally sufficient, just whether  
14 this reflects the evidence we've produced to them.

15 THE COURT: Okay.

16 MR. RADINE: Now, we understand from them that  
17 they do not think that transactional information is  
18 sufficient to prove personal jurisdiction on its face.  
19 They've asked us what information or evidence we intend  
20 to put in at this stage and so on. We're at a bit of a  
21 loss as to what that would be under *Licci*. The evidence  
22 that relates to personal jurisdiction is transactions  
23 for, relating to the terrorist group in question from  
24 which the claims arise.

25 So we understand that they've argued that the

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PROCEEDINGS

7

2 evidence, we have not - I'll just quote so I don't  
3 misstate it - that we have, quote, "not provided evidence  
4 sufficient under the Due Process Clause," close quote, to  
5 show, quote, "that the claims in this action arise out of  
6 or relate to any transfers processed through its  
7 correspondent accounts in New York," close quote,  
8 because, they argue, last quote, "transfers involving  
9 routine banking transactions and for humanitarian  
10 services, for example, do not give rise to claims under  
11 JASTA."

12 So our position is that's a merits question.  
13 The law in this case, as Your Honor pointed out in two  
14 reports and recommendations, is that the Second Circuit  
15 noted that the use of a correspondent account standing  
16 alone could be grounds to find personal jurisdiction so  
17 long as the use is purposeful. That's from Your Honor's  
18 2020 opinion.

19 THE COURT: Right.

20 MR. RADINE: And purposeful, as this Court  
21 explained, means repeated and volitional as we argued  
22 these were and I think as this chart suggests.

23 THE COURT: Can I ask you something about - I'm  
24 sorry to interrupt, but I'm just looking at the dates of  
25 these various transactions. Is there relevance to the

1 PROCEEDINGS

8

2 dates, I mean when was, I see a bunch are Holy Land  
3 Foundation, some Interpal, some others. Were any of  
4 these Holy Land Foundation transactions after this  
5 designation?

6 MR. RADINE: They were all after the Israeli  
7 designation of Holy Land Foundation which we alleged was  
8 publicized and, therefore, sufficient under *Honickman*.  
9 They're not after the U.S. designation because that  
10 would've prevented the correspondent banks from  
11 processing these transactions.

12 THE COURT: Okay. Okay. So none of these are  
13 post-U.S. designation?

14 MR. RADINE: Right, there wouldn't be U.S.  
15 dollar transactions post-U.S. designations. So for HLF  
16 that's the end of 2001, but for Interpal, of course,  
17 that's 2003. And then some entities weren't designated.

18 THE COURT: Right, but you have Interpal  
19 transactions from prior to the violence at issue.

20 MR. RADINE: Yeah. So anyway, the personal  
21 jurisdiction, so obviously *Kaplan* and *Linde* make clear  
22 that what constitutes routine banking is for a jury to  
23 decide. Whether it's knowledge is sufficiently-or,  
24 general awareness is sufficiently established from a  
25 humanitarian purpose of a transactions is a merits

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PROCEEDINGS

9

2 question that we'll obviously arrive to when we get into  
3 merits discovery, but there's not been a court that's  
4 held that a defendant's knowledge has to be evident on  
5 the face of each transfer. That could be proven in any  
6 number of ways.

7 THE COURT: At least for jurisdiction you're  
8 saying.

9 MR. RADINE: At least for jurisdiction, right.  
10 So arising out of, which is their argument is on the due  
11 process version of "arising out of." There's the New  
12 York version of "arising out of" and the due process  
13 version. According to their letter, they're contesting  
14 the due process version. Of course, as this Court noted,  
15 they had not contested the New York "arising out of"  
16 version in a motion to dismiss. In any event, the Second  
17 Circuit has never, they note this in *Licci*, found a case  
18 where plaintiff satisfied the New York rule but not the  
19 due process rule.

20 As this Court noted, under the New York rule,  
21 quote, "the foreign bank's use of its correspondent  
22 accounts is not completely unmoored from the legal claim  
23 regardless of the ultimate merits of the claim" is the  
24 standard that Your Honor set out correctly. And then as  
25 for whether the - whether due process could operate

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PROCEEDINGS

10

2 differently, Your Honor noted, quote, "CAB offered no on-  
3 point case authority supporting this argument." The  
4 Second Circuit does not appear to have seen it either.  
5 So we think that's that for personal jurisdiction.

6 Now, we want to come to understand more about  
7 how the bank operated that we think bears on the  
8 transactional element and the documents they could have,  
9 and that's where the 30(b)(6) deposition notice comes in.  
10 And I can speak on that briefly, Your Honor.

11 THE COURT: Yes.

12 MR. RADINE: So we've noticed three issues to  
13 them. The first relates to the IT systems that the bank  
14 used during the relevant period as they relate to  
15 transaction processing. So they have explained to us  
16 before a little bit about their understanding of their  
17 systems at the time. They explained that they used the  
18 Kindle Banking System in the relevant period. That's  
19 been taken offline, and they don't have - the system is  
20 not supported anymore nor is the associated OS and  
21 hardware. And they mentioned they don't have backups and  
22 archives.

23 It's been our experience working with banks in  
24 these cases that what is not currently usable by the  
25 bank's IT staff is not necessarily unrecoverable.

1

PROCEEDINGS

11

2 Relevant data may sit on multiple systems, it may have  
3 been transferred to another system, recovery may be  
4 possible. It may necessitate a vendor who specializes in  
5 recovery work. In any event, we won't know until we  
6 ascertain what systems were used. I'd also point out  
7 that that's a single system. So in our experience banks  
8 use multiple systems. We've seen that the system that  
9 runs the SWIFT database which its transactions are  
10 processed through and other banks is not the same as  
11 their core banking system which is what I believe the  
12 Kindle system likely is. There may not be more to draw  
13 from this line of inquiry, but we can't know until we  
14 begin to have it.

15 The second issue is that of the CAB's use of  
16 correspondent accounts and nested accounts. As Your  
17 Honor raised at our last conference, it's worth knowing  
18 how the bank used its correspondent accounts generally,  
19 it gives a sense of the jurisdictional contacts they had  
20 when processing the transactions. And then in the nested  
21 account which is sub judice, the impact of that, in  
22 *Spetner*, I would imagine the bank, just as much as us,  
23 would like to know if CAB used its nested account in a  
24 way that was similar or different than the defendant in  
25 that case.

1

PROCEEDINGS

12

2 THE COURT: And how did the defendant use the  
3 nested account in the cases pending before the Second  
4 Circuit?

5 MR. RADINE: So those transactions, when a  
6 customer of the bank wants to push a transaction, they  
7 will indicate who the ultimate beneficiary is. And then  
8 those are instructions that the originator bank, the  
9 defendant, would then give to their bank where they hold  
10 their nested account for further credit down the line  
11 ultimately through New York and then to the opposing  
12 party, the counterparty to the transaction.

13 So in a sense that when a bank holds a  
14 correspondent account in New York, when they send a  
15 transaction through New York, they're providing  
16 instructions to each bank down the line as to moving it  
17 along. This just adds another bank. So the question  
18 would be, for instance, like what control does the  
19 defendant have --

20 THE COURT: Why does it go through a nested  
21 account versus just going through its own, why would it  
22 add a party instead of minimize the parties?

23 MR. RADINE: So --

24 THE COURT: What's the purpose of being --

25 MR. RADINE: Sure, banks hold nested accounts

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PROCEEDINGS

13

2 for different reasons. That's something we'd certainly  
3 get into with them. Sometimes they're unable to hold, a  
4 New York bank won't offer them an account or at least an  
5 account with terms they want --

6 THE COURT: But we know that CAB did have some  
7 correspondent accounts.

8 MR. RADINE: Right. It could be a legacy  
9 account that they had from before they had access to New  
10 York accounts that they were still using. These are all  
11 things we would get into with them and see whether or not  
12 that's a fruitful topic to understand.

13 The last issue relates to their sale of relevant  
14 branches to Palestine Islamic Bank. They informed us  
15 that whatever records were at those branches in the  
16 Palestinian territories were transferred to the buyer  
17 bank when they bought those branches because possession,  
18 custody, and control can relate to whether or not you  
19 have the right to demand records back. We just want to  
20 understand what the agreement was as to those records,  
21 document sharing, however that operated, whether  
22 documents were transferred back to CAB at all.

23 Now, on these topics we have a corresponding set  
24 of document requests, we have four document requests that  
25 relate to these topics. CAB in a meet and confer told us

1

PROCEEDINGS

14

2 maybe those records will answer our questions without the  
3 need for deposition. We're, of course, open to that, to  
4 see those records and to see if that makes sense. We  
5 think we'd likely, at least from our experience in the IT  
6 process that we've gone through with other banks, I  
7 imagine we would have follow-up questions. But, of  
8 course, you know, we are happy to look at the documents  
9 first and talk to them about that.

10 THE COURT: Okay.

11 MR. RADINE: So the big takeaway, Your Honor,  
12 is that between the continuing work of the banks that  
13 we've issued subpoenas to and the deposition process,  
14 we'd like to extend the discovery period. We propose 90  
15 days in part to get us past the holidays from which we  
16 imagine we'll have a little bit less responsiveness from  
17 the banks and so on, and that would put us on February 2.

18 THE COURT: Right, well, we had November 14 as  
19 completion of jurisdictional discovery. So you want a  
20 90-day extension on that.

21 MR. RADINE: Yeah, I think November 4 is the  
22 deadline, and the --

23 THE COURT: Maybe I have a typo in my notes.

24 MR. RADINE: Sure, November - so 90 days from  
25 November 4 would be February 2. Of course, we don't have

1

PROCEEDINGS

15

2 the Court's decision on the R&R, so our feeling is is  
3 that this is time we can use productively to do this  
4 work.

5 THE COURT: Okay. I'll hear from defendants  
6 next about these issues and also the extension of  
7 discovery.

8 MR. SIEGFRIED: Thank you, Your Honor. Dealing  
9 about nesting, which is in your mind at the moment,  
10 having looked at that chart, I don't want to - and you  
11 also said before you're not deciding merits --

12 THE COURT: No.

13 MR. SIEGFRIED: -- at a status conference. So  
14 I'm not going to argue a great deal about the merits  
15 other than to note a couple of things. One, the very  
16 beginning of their chart is replete with these so-called,  
17 what they're now calling, nesting transfers. Now, it's  
18 interesting actually because the plaintiffs like to keep  
19 changing their theory in this case. First of all,  
20 there's absolutely nothing in the complaint about  
21 nesting. In fact, as you may recall, what we brought to  
22 the Court's attention is that allegations in the  
23 complaint regarding these transfers, that they were all  
24 through Citibank, were incorrect when made, when the  
25 complaint was drafted. And then when you inquired of Mr.

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PROCEEDINGS

16

2 Osen about that issue when he was here, he said, oh,  
3 well, but we're not sure because the transfer slips don't  
4 necessarily show us whether it went through Citibank, and  
5 we don't have the complete transfer slips, so it may have  
6 gone through Citibank.

7 I gather they've now, because they should, have  
8 retreated from that argument to now talk about it as a  
9 nesting argument. And as far as a nesting argument is  
10 concerned, Your Honor, since they raised it and since I  
11 assume it will come up again, the case is *Spetner v.*  
12 *Palestinian Investment Bank*, 495 F. Supp. 3d 96, a 2020  
13 decision, in which not just any plaintiff but these  
14 Plaintiffs represented by Mr. Osen and his firm, the same  
15 counsel that you have before you, made every conceivable  
16 argument under the sun to Judge, I think it's Komitee is,  
17 is that --

18 THE COURT: Who?

19 MR. SIEGFRIED: K-O-M-I-T-T --

20 THE COURT: Oh, Komitee.

21 MR. SIEGFRIED: Komitee. I don't know where  
22 you put the accent on that. Mad a whole bunch of  
23 arguments because the situation was even more involved  
24 than it is here. They had three different nesting  
25 theories. And he carefully reviewed each one, and he

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PROCEEDINGS

17

2 said there was no personal jurisdiction. That is the law  
3 as it stands right now. Mr. Radine is correct that they  
4 have appealed to the Second Circuit. Obviously, I  
5 wouldn't say anything about how you might judge the  
6 matter, but I think that if you read the decision, it's a  
7 fairly thorough, careful, detailed decision as to why  
8 that theory simply doesn't hold water.

9 THE COURT: Of course, that's only with respect  
10 to 17 transactions. The other ones are through --

11 MR. SIEGFRIED: And let's go to the others.

12 THE COURT: Yeah.

13 MR. SIEGFRIED: Then we have a whole bunch of  
14 NatWest transactions that, of course, didn't go through  
15 New York. A lot of them are in Sterling, some of them  
16 are in (indiscernible), but they're not through Citibank  
17 in New York. There are --

18 THE COURT: None of these are through New York?

19 MR. SIEGFRIED: No, I'm not saying that, Your  
20 Honor. I've got a large sheet here, but I think that the  
21 last time we looked, they keep making ongoing  
22 productions, but the last time we looked, there were  
23 maybe only a couple, two or three, that went through  
24 Citibank. So, again, this is why, when I objected  
25 before, I said there was much to be said about this.

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PROCEEDINGS

18

2 Then we have issues regarding this contention by Mr.  
3 Radine, by the plaintiffs, that this is somehow a merits  
4 issue. Your Honor, we will have the opportunity  
5 obviously to brief, and for you to consider, this issue,  
6 but the Due Process clause, insofar as this is concerned,  
7 is not a fifth grade math class in which you say how many  
8 transfers were there and, therefore, oh, there must be  
9 jurisdiction. Not any transaction will do.

10 The Due Process clause, and everyone from the  
11 Supreme Court to the Second Circuit have been quite  
12 clear, that the second part of this analysis, beyond the  
13 number of transfers, which may be relevant to the issue  
14 of purposefulness, the main part of due process is that  
15 the claim must arise out of or relate to the transaction.  
16 It's the nature of the transaction that is  
17 extraordinarily important, and when we get to the merits  
18 of this topic, we will address it, and, indeed, I think  
19 you'll see that these claims do not, cannot relate to or  
20 arise out of any of the transactions that they're listing  
21 here.

22 You can - if it were otherwise, it would be the  
23 case, I believe, that there'd be no distinction between  
24 the maintenance of an account and a use account. It's  
25 hard to imagine that anybody has a correspondent account

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PROCEEDINGS

19

2 and doesn't use it. So the question is what is it using  
3 it for? What is the transaction? And that is where I  
4 think their case falls apart, and it is rather  
5 interesting if, and I think plaintiffs understand this  
6 because, quite frankly, if they had 110 transactions that  
7 really stood for what they would like to report in court  
8 today, then I'm not sure why we're going through seven  
9 more subpoenas to a whole bunch of banks or what further  
10 evidence they need other than what they have today.

11 So now let me turn to the rest of the - if I've  
12 answered that question.

13 THE COURT: Well, let me stop you for one  
14 second --

15 MR. SIEGFRIED: Sure.

16 THE COURT: -- because there's - I see here,  
17 looks like four transactions through New York in CAB's  
18 New York correspondent accounts involving use of Al-  
19 Hayek. If the court - so the ones from Bank One, from  
20 Texas, there's a bunch of those, and that's Holy Land  
21 Foundation was founded out of Texas. So I guess my  
22 question is sort of a do you, is it your position that if  
23 anything that the jurisdiction would be, or venue would  
24 be appropriate in Texas versus New York, assuming there  
25 was jurisdiction, assuming jurisdiction was established

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PROCEEDINGS

20

2 through this correspondent bank accounts, how does that  
3 impact where this case is being litigated now?

4 MR. SIEGFRIED: It's --

5 THE COURT: Right? Because there's four New  
6 York and there's a lot of Texas. So, and if it were, if  
7 Texas were appropriate, do you want to be there versus is  
8 this a more convenient venue for everyone? I mean how  
9 does that factor into the analysis?

10 MR. SIEGFRIED: I would say New York is not a  
11 convenient factor nor is Texas for purposes of a foreign  
12 bank, and I'd rather, instead of responding off the cuff  
13 to your comment, come back to you on it.

14 THE COURT: Okay.

15 MR. SIEGFRIED: But I think that, I don't think  
16 we really get there because whether we talk about, as I  
17 said, those Hayek transactions, which I cannot believe  
18 ultimately you will find differently than Judge Komitee  
19 has, or with respect to these Bank One transactions which  
20 also have issues around them, quite frankly, separate and  
21 apart from their use. I don't think we're going to end  
22 up reaching that issue. I just don't think they're  
23 jurisdictionally sufficient either for purposes of Texas  
24 or for New York, quite frankly.

25 THE COURT: Okay. You can address the

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PROCEEDINGS

21

2 remaining issues.

3 MR. SIEGFRIED: Okay, thank you. And, by the  
4 way, I should add, Your Honor, or maybe the last point I  
5 should make is we did have a meet and confer with Mr.  
6 Osen in which he said, well, we'd like you to confirm the  
7 content of the transactions, and, frankly, I'll have that  
8 conversation further with him offline. I don't actually  
9 understand the question, what the content of the  
10 transaction is.

11 THE COURT: Well, I assume they want to know do  
12 you dispute that these transactions actually occurred  
13 with these parties on these dates.

14 MR. SIEGFRIED: If that's what they're asking  
15 now, it has its own set of issues. So we'll have that  
16 discussion with them.

17 With respect to the subpoenas, you know, at the  
18 August 25 hearing, you set the deadline of November 4,  
19 and you said I want you to really focus on the  
20 jurisdictional issues. And Mr. Osen said in response,  
21 well, with respect to jurisdictional discovery, the  
22 deadline for third-party banks, we'll obviously abide by  
23 that. You asked for the status of discovery at that  
24 point, he gave you the status of discovery, there was not  
25 a word mentioned about, oh, we want to issue more

1

PROCEEDINGS

22

2 subpoenas. There wasn't - then we have somewhere  
3 between, somewhere in the middle of September to late  
4 September, I'm not even sure they say they served them  
5 during that period. I know that the subpoenas are dated.  
6 But supposedly they served something knowing what your  
7 discovery deadline was, and these subpoenaed banks are  
8 not any of the correspondent banks in New York. They're  
9 not referred to in the complaint which identified the  
10 correspondent accounts. So this is - so we have  
11 subpoenas going out to seven banks, close to within a  
12 month or so of your discovery deadline, to banks which,  
13 with whom we do not have any correspondent account in New  
14 York. And the subpoenas, as I read them, are for in each  
15 case 23 years of records and for 74 or more individuals  
16 and entities, notwithstanding the fact that the complaint  
17 that is before us talks about five individuals and 16 --

18 THE COURT: So the subpoenas are covering more  
19 than what's mentioned in the complaint?

20 MR. SIEGFRIED: Absolutely, and, Your Honor, if  
21 you look at the joint status report, what you see in the  
22 plaintiff's section is that, I think the term they use is  
23 BNY, Bank of New York, has balked at the request for 23  
24 years of, I don't know whether they say the 23 years, but  
25 balked at the request, that they rejected multiple

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PROCEEDINGS

23

2 compromises, and they only hope that it can be resolved  
3 without judicial intervention.

4 In the meet and confer I asked Mr. Osen whether  
5 the Bank of New York had any position as to whether it  
6 even had documents going back to the relevant time  
7 period, and I believe he told me that at least for the  
8 Bank of New York, he said we don't even know that we have  
9 them going back that far. Citibank had no documents,  
10 none, zero, there's none produced by them. And Standard  
11 Charter, the earliest document that they have that  
12 involves CAB, a CAB transfer, is 2005.

13 So the idea that seven subpoenas are now going  
14 out for this breadth, one thing for sure, if Your Honor  
15 is inclined to let this part of it go forward and to  
16 extend on this basis, we certainly don't want to be back  
17 here in 30 days, 60 days, or 90 days hearing that there  
18 are yet another six subpoenas or that we are still in  
19 negotiation trying to get records from banks over a 23-  
20 year period, etc.

21 And that's relevant to another point regarding  
22 this chart and to what's happened today. There was a,  
23 what seems to have happened with some of these banks, it  
24 happened with Standard Charter, happened with HSBC with  
25 whom also CAB had no correspondent account, is when they

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PROCEEDINGS

24

2 get the subpoena, which, yes, it says transactions with  
3 CAB, then has a list of 74 individuals for 23 years. As  
4 a practical matter, I think we all know what the bank  
5 does. It takes the list, the exhibit B list and it  
6 produces documents, transactions involving where those  
7 identified entities appear. So for HSBC which did  
8 something like five productions over the last couple of  
9 months, and produced a lot of documents, not a single one  
10 refers to CAB.

11 So this subpoena of the seven banks seems to be,  
12 as a reason for extension, seems to rest on a rather thin  
13 reed. Again, we want to get past this discovery, we want  
14 to get this motion, we think it's a good motion based  
15 upon everything we've seen. So if Your Honor's inclined  
16 to give them some leeway, we understand, but we certainly  
17 - this starts to become a real stretch late in the game  
18 to try to develop evidence.

19 On the - with respect to the 30(b)(6), again, I  
20 thought we had a very practical conversation in the meet  
21 and confer with Mr. Osen who, in all fairness, was the  
22 only one who spoke at the meet and confer, but it's  
23 curious because you had directed that we provide  
24 plaintiffs with a letter regarding the sale of the  
25 branches --

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PROCEEDINGS

25

2 THE COURT: Yes.

3 MR. SIEGFRIED: -- regarding the IT platforms.

4 I think at one point there was an exchange where you  
5 asked Mr. Osen something to the effect of and what is the  
6 source codes or what's the operating systems going to  
7 have to do with all of this. But we provided that  
8 information. We provided that information, as Mr. Osen  
9 acknowledged last time, back in July about the sale,  
10 about the fact we didn't have transaction records, with  
11 respect to the system. It wasn't terribly vague. It  
12 said the bank is currently using Temenos, T-E-M-E-N-O-S,  
13 T24 Core Banking System under IBM UNIX OS. The system  
14 was implemented during the period 2011 to 2013. The  
15 prior operating system was the Kindle Banking System.  
16 The bank cancelled the license in 2013. The Kindle  
17 System is not supported anymore nor is the associated OS  
18 and hardware.

19 Now, that's on July 29 they had that  
20 information. On Sunday evening, October, if I'm off by a  
21 date, October 7 or 8, Sunday evening, they serve a  
22 30(b)(6) deposition notice. Between July and October  
23 there is no follow-up, there's no request for any  
24 documents relating to those issues. And I asked Mr.  
25 Osen, number one, why would this be an efficient way to

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PROCEEDINGS

26

2 proceed. I said if I come in with a 30(b)(6) witness in  
3 2022 about a system that hasn't been in effect since  
4 2013, regarding documents that are no longer retained,  
5 that's not supported, that was a licensed system, and the  
6 witness says what do you want me to tell you, I said then  
7 you're going to tell me I gave you the wrong 30(b)(6)  
8 witness.

9 THE COURT: Well --

10 MR. SIEGFRIED: So the point is, I said why  
11 don't we - and I can't even tell you that we have the  
12 documents, right, this is, again, a conversation that  
13 occurred at the end of last week. If we had the  
14 documents, we'll give them to him --

15 THE COURT: Right.

16 MR. SIEGFRIED: -- and if he wants to go run  
17 off to some expert and ask some expert, well, if that's  
18 what they had and it was under a license and they no  
19 longer have the thing, can you, I don't know what you can  
20 do, but in any event somebody wants to say they think  
21 they want to revive a system that's no longer there --

22 THE COURT: You already confirmed that the data  
23 from the relevant time period was not transferred --

24 MR. SIEGFRIED: Absolutely.

25 THE COURT: -- from Kindle to your system, the

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PROCEEDINGS

27

2 current system, is that correct?

3 MR. SIEGFRIED: Yes.

4 THE COURT: Okay, so what I'm hearing gives me  
5 concern, Mr. Radine, that what you're doing is outside of  
6 the scope of Rule 26(b) which confines discovery to  
7 information that's relevant to the claims and defenses  
8 and proportional to the needs of the case. Why would you  
9 be subpoenaing banks that, you know, with which CAB  
10 didn't have correspondent bank accounts? That doesn't  
11 make any sense.

12 And further why would CAB have knowledge about  
13 the Kindle system? Wouldn't the appropriate inquiry be  
14 of Kindle if it even still exists as to what's going on  
15 with its system and did it ever retain any information?  
16 I doubt that it would've retained sensitive banking  
17 information. I doubt that the bank, any bank would allow  
18 that. But isn't a proper inquiry of Kindle rather than  
19 CAB since it was merely licensing that program? I'm not  
20 really understanding what you're doing or looking for or  
21 why this is relevant to jurisdiction.

22 MR. RADINE: Sure, well, I'll take those in  
23 parts. I'll start with the banks. Right, those are not  
24 CAB's correspondent banks. Those are the banks that are  
25 on the other side of the transaction. Every --

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PROCEEDINGS

28

2 THE COURT: Other side of what transaction? It  
3 seems like a fishing expedition, that you're just  
4 subpoenaing random banks with which CAB doesn't have any  
5 existing relationships to see, hey, did you ever have any  
6 kind of transaction that somehow made its way to CAB? I  
7 mean how is that going to jurisdiction?

8 MR. RADINE: Sure. So this chart, Your Honor,  
9 is consisting entirely of records produced by banks that  
10 they don't have a correspondent banking relationship with  
11 CAB except for the nested account at Arab Bank.

12 THE COURT: Right, but this is - what defendant  
13 is saying is this is not even helping you. It doesn't  
14 even have New York except for these four transactions  
15 with use of Al-Hayek.

16 MR. RADINE: I'm at a little bit of a loss as  
17 to what that means. So, again, just to walk through how  
18 this works. The - so let's look at the direct transfers  
19 that start on page 1, go to page 2. So the column, so  
20 the beneficiary bank in these is Cairo Amman Bank. You  
21 can see that in that column. And the beneficiary's  
22 correspondent bank is in the first column on page 2, 4,  
23 and 6. So in every --

24 THE COURT: Well, 1 of 6 goes with 2 of 6, is  
25 that right?

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PROCEEDINGS

29

2 MR. RADINE: Correct, so --

3 THE COURT: And so the originating bank we  
4 have, let's just take Holy Land Foundation with Texas  
5 because that's at least in the United States as opposed  
6 to the U.K. Okay? So the originating bank says Bank One  
7 Texas.

8 MR. RADINE: Right.

9 THE COURT: And then there's a blank for  
10 originator's correspondent bank.

11 MR. RADINE: Right.

12 THE COURT: And then - I'm just looking at the  
13 third line on page 1, and that says the beneficiary party  
14 is the Halul Zakat Committee, and the beneficiary bank is  
15 CAB. So that's, CAB didn't, as I understand it, didn't  
16 originate this transaction. It received money from Holy  
17 Land Foundation that was deposited into the account of  
18 its customer Halul Zakat Committee. Is that how I'm to  
19 interpret this?

20 MR. RADINE: Yes.

21 THE COURT: Okay.

22 MR. RADINE: So --

23 THE COURT: And there's no intermediary --

24 MR. RADINE: No.

25 THE COURT: -- bank listed for this. Where is

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PROCEEDINGS

30

2 New York in this picture?

3 MR. RADINE: That is in column, the first  
4 column on page 2. That is the, if you look at the column  
5 name, beneficiary's correspondent bank, it's beneficiary  
6 bank's correspondent bank. I believe that's clear --

7 THE COURT: Well, okay, so I don't think  
8 there's a dispute that CAB had a correspondent account  
9 with Citi. But this transaction - is this - I don't  
10 understand this transaction to have gone through Citi.

11 Are you saying that it did go through Citi?

12 MR. RADINE: Yes --

13 THE COURT: You're saying that - are you saying  
14 that Bank One in Texas transferred the money to Citi in  
15 New York, then transferred the money to CAB in wherever  
16 this was, Lebanon or Israel or some place, where?

17 MR. RADINE: Yeah. There's not a word on this  
18 that's our assumption. The bank would've done it through  
19 their correspondent account. That means on the face of  
20 the transfer record that we have that it says Citibank  
21 New York for further credit of Cairo Amman Bank, Hebron,  
22 etc. That's true for every single one of these  
23 transactions. In fact, it's wherever a document might be  
24 missing a piece of information, we might have a blank,  
25 but in every instance these are coming through the

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PROCEEDINGS

31

2 Citibank account. That's in the beneficiary's  
3 correspondent bank column, in every single instance.  
4 Some of them are through Amex in New York.

5 THE COURT: So the - so Holy Land Foundation  
6 says, hey, we want to send money to Halul Zakat  
7 Committee, and they say, well, our account is at CAB in  
8 Lebanon, and so NatWest initiates it and it gets  
9 deposited. And what I'm hearing CAB say is how is it  
10 engaging in anything volitional I guess, simply receiving  
11 the money through this mechanism.

12 MR. RADINE: Yes, Your Honor already ruled on  
13 that issue --

14 THE COURT: Right.

15 MR. RADINE: -- and held correctly that under  
16 Arcapita and Amigo Foods receiving a transaction rather  
17 than rejecting it qualifies as volitional for personal  
18 jurisdiction purposes.

19 All of the transactions, including all the  
20 NatWest ones, I don't know why he's suggesting otherwise,  
21 went through New York. Again, you can see the NatWest  
22 ones because they say NatWest in the originator bank, and  
23 then if you look at the corresponding row in the  
24 beneficiary's correspondent bank where it says Citi  
25 throughout, that's not an assumption we're making. We're

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PROCEEDINGS

32

2 taking that off of the transaction records we have.

3 THE COURT: I see, so --

4 (interposing)

5 THE COURT: So for the U.K., just taking the  
6 first, well, just taking the first NatWest Interpal  
7 transaction, so NatWest in the U.K., Interpal says we  
8 want to give money to the Beit Fajjar's Zakat Committee -

9 -

10 MR. RADINE: Yes.

11 THE COURT: So they, NatWest then goes through  
12 NatWest U.K. --

13 MR. RADINE: Well, they had a branch in New  
14 York which is why I think it's not listed. So they  
15 would've cleared it themselves through New York. They  
16 would transfer it across the books of the Federal Reserve  
17 Bank in New York --

18 THE COURT: Oh, because it was U.S. dollar  
19 transaction --

20 MR. RADINE: Correct.

21 THE COURT: -- they go through their own U.S.  
22 account and then switch it to Citi. Oh, no, here they  
23 switch it to Amex Bank.

24 MR. RADINE: Yes.

25 THE COURT: And then to CAB where the recipient

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PROCEEDINGS

33

2 has the account.

3 MR. RADINE: Correct. This is the same  
4 structure as in *Licci*, precisely. In fact, Amex is the  
5 exact correspondent bank in *Licci*.

6 MR. SIEGFRIED: Your Honor, may I jump in for  
7 one second --

8 THE COURT: Yes.

9 MR. SIEGFRIED: -- because it's relevant to  
10 your question.

11 THE COURT: Yes.

12 MR. SIEGFRIED: We didn't have a correspondent  
13 account at Amex. So the very first example that you're  
14 using is NatWest has actually - I'll back up for one  
15 second and try not to get into merits of the argument.  
16 But NatWest either chose, for whatever reason, to send  
17 the transfer through Amex, fine, but that has nothing to  
18 do with us, or sometimes, Your Honor, under the system  
19 that actually happens under Swift, the bank, as I think  
20 you probably know, doesn't even make the originating  
21 bank, NatWest in this case, for an Interpal transaction,  
22 doesn't even make the decision. It puts it into Swift,  
23 and the Swift computers do whatever they do --

24 THE COURT: System just does its stuff.

25 MR. SIEGFRIED: -- and they send something

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PROCEEDINGS

34

2 through. So I don't see how that gets to be the  
3 volitional use of a correspondent, of its correspondent  
4 account in New York.

5 THE COURT: But you did have a correspondent  
6 account with Citi.

7 MR. SIEGFRIED: We did have a correspondent  
8 account with Citi, but I think the way we got into this  
9 line of questioning was you posed a simple question which  
10 is with respect to these seven new subpoenas that they  
11 want to serve which are not to the CAB correspondent  
12 banks, what is the relevance of that, why is that a Rule  
13 26(b) request --

14 THE COURT: Right, right.

15 MR. SIEGFRIED: -- and I'm actually not sure I  
16 heard the answer to that question.

17 THE COURT: Yes, well, let's go back to that,  
18 Mr. Radine, what is the relevance?

19 MR. RADINE: Sorry, if I just - I want a, just  
20 a clean record. A bank can't force a transaction through  
21 an intermediate bank that doesn't have a correspondent  
22 relationship. Of these seven transactions with Amex - I  
23 don't know sitting here, the story, what appears to be  
24 the case is they did have a correspondent account with  
25 that bank. Sitting here I don't know. We're pulling

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PROCEEDINGS

35

2 this from the face of the transaction. We've been  
3 through the - that's not something I think is  
4 controversial or obviously --

5 THE COURT: Well, it is because CAB is saying  
6 they didn't have a correspondent bank with, they didn't  
7 have a correspondent banking relationship with Amex or  
8 here's Bank of New York --

9 MR. RADINE: Bank of New York I think they  
10 concede. But, Your Honor, this sounds like grounds all  
11 the more to have a 30(b) (6) because they're denying  
12 having an account that we have on paper. They're denying  
13 it here in court. It's not under oath. It's a great  
14 question to ask them in a 30(b) (6) context.

15 THE COURT: Okay, but that answers the question  
16 about why you might want to have a 30(b) (6), you might  
17 want to have a witness explain what the different  
18 relationships were, but that doesn't go to the subpoenas  
19 onto these other banks.

20 MR. RADINE: So these are banks that we  
21 understand would be likely on the other side of the  
22 transactions because they are, for instance, either the  
23 biggest players in the markets where a lot of these Hamas  
24 affiliated entities are or because we have other records  
25 that have attached them to entities like that. They have

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PROCEEDINGS

36

2 not moved, of course, to quash.

3 THE COURT: So you're trying to get reverse  
4 information essentially.

5 MR. RADINE: Sure, this whole chart --

6 THE COURT: These other banks - so these other  
7 - you are speculating that these other banks have  
8 accounts with Hamas entities, not all of which are even  
9 listed in your complaint, and those entities might have  
10 asked their banks to send money to somebody who had an  
11 account with Cairo Amman Bank. So it sounds like a  
12 fishing expedition is really what it sounds like.

13 MR. RADINE: Or they're the correspondent bank  
14 for - they don't have to have the accounts themselves.  
15 They can also be in a correspondent position. These  
16 banks have New York branches which is why --

17 THE COURT: But you don't know, as you sit here  
18 today, whether - you don't know who the customers of  
19 these subpoena recipients are or whether they ever  
20 initiated a banking transaction that went to a customer  
21 of CAB. You don't even know that.

22 MR. RADINE: But these banks are the choke  
23 points essentially, rather than, for instance,  
24 subpoenaing all 10,000 banks in Germany, you have  
25 Commerzbank, the largest sort of clearing bank for

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PROCEEDINGS

37

2 Germany, and I believe we recently got a transaction hit  
3 on that. So so far it's been productive.

4 THE COURT: You got one hit out of how many  
5 subpoenas and how many records and years? I mean this is  
6 really excessive it seems, and really how are you going  
7 to demonstrate jurisdiction through this?

8 MR. RADINE: I'm not sure how it's to the  
9 defendant's prejudice that we reach out with subpoenas.  
10 They've produced nothing --

11 THE COURT: Well, the prejudice is they keep  
12 coming into court. They're waiting to brief the  
13 jurisdictional issue on the merits as opposed to under a  
14 Rule 12 standard, and they're spending attorney's fees  
15 involving this, and then they're going to have to prepare  
16 a witness for a 30(b)(6) deposition on a topic that it  
17 seems, I don't know understand why they would have any  
18 knowledge of it at all. Why would they have knowledge on  
19 this other company's system that they no longer use?

20 MR. RADINE: I'll turn to the 30(b)(6) thing.  
21 My understanding is, first, a party can't object to the  
22 relevance of a subpoena. That's something that the  
23 subpoena recipient --

24 THE COURT: Well, that is true, but at the same  
25 time you're asking for an extension of discovery based on

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PROCEEDINGS

38

2 that, and you are bound by Rule 26(g) and 26(b) to seek  
3 discovery that is consistent with the rules relevant to  
4 the claims and defenses and proportional to the needs of  
5 the case. So, yes, that is true that CAB may not have  
6 standing to object on relevance grounds, but you as an  
7 officer of the court have an obligation to utilize the  
8 Federal Rules consistent with what they say.

9 MR. RADINE: So far, Your Honor, we have only  
10 gotten records from third-party banks that don't have a  
11 correspondent relationship with CAB. If we didn't have  
12 access to records like those, we'd be at zero instead of  
13 101 on this list right here. We are meeting and  
14 conferring with those banks, we take their objections  
15 seriously, and work on narrowing the subpoena with each  
16 of them. They're obviously free to move to quash, but so  
17 far we've had productive conversations with them, and  
18 some of them have been producing already, some are still  
19 working on it, as he mentioned, Standard Chartered Bank,  
20 which, by the way, owned Amex or now owns Amex Bank,  
21 (indiscernible) that bank, produced records that went  
22 back to '05. We're obviously asking them to look back  
23 further.

24 I don't think with the defendant producing  
25 nothing that we shouldn't be allowed to reach out to

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PROCEEDINGS

39

2 banks that we have at least a reason to believe can run a  
3 search --

4 THE COURT: What is the reasonable belief? It  
5 sounds - you're not even including entities that are  
6 mentioned in the complaint.

7 MR. RADINE: The company, Your Honor, I --

8 THE COURT: It's really speculation. Has  
9 somebody told you, oh, Standard Chartered has an account  
10 with this particular entity that's listed in the  
11 complaint, has somebody told you that?

12 MR. RADINE: They're likely to be - well,  
13 they're likely to be, to have the role rather of a  
14 correspondent bank. We subpoenaed their New York  
15 branches for each of these banks rather than casting  
16 about around the world. There's only so many banks which  
17 do dollar clearing at all, and any transaction from  
18 around the world that comes through their bank for dollar  
19 clearing is something that they would have a record of or  
20 at least would have had a record of at the time. So --

21 THE COURT: Yes, that may all be true, but it  
22 is still speculation that you're going to have a hit on  
23 anything that is relevant.

24 MR. RADINE: And as for the list - well, I  
25 think, Your Honor, that we are, again, targeting a

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PROCEEDINGS

40

2 limited set of banks that we think have the most  
3 likelihood of being in that position. Obviously, the  
4 names are names that we understand as Hamas customers and  
5 entities. We didn't understand the complaint has a  
6 necessity to be a directory of every Hamas operative or  
7 entity. That's something that expands during discovery  
8 that we are seeking with those banks.

9 If I could turn to the deposition --

10 MR. SIEGFRIED: Your Honor, sorry, can I jump  
11 in on that for a moment? Apart from everything you've  
12 just said, the last statement is an extraordinary  
13 statement. So your - we are arguing or will be arguing  
14 that the Court doesn't have personal jurisdiction with  
15 respect to the claims asserted in the complaint. This  
16 was no tiny complaint. This was a very long complaint  
17 which listed five individuals, sixteen or seventeen  
18 entities, a lot of detail about it. And now the argument  
19 is, well, we think there may be some banks out there, we  
20 know they're not the correspondent accounts, they may  
21 have had customers or sent money to 70 some odd other  
22 individuals, and maybe we'll find a hit that actually  
23 went through CAB. And then what? So they did a transfer  
24 to somebody who's not even in the complaint. So now  
25 they're going to argue, well, that's a Hamas person and,

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PROCEEDINGS

41

2 therefore, there's jurisdiction even though those persons  
3 and entities aren't referenced in the complaint.

4                   And this is all coming, we haven't heard, A,  
5 when they, whether they even effected the service. This  
6 is all coming close to your discovery deadline when they  
7 said they would abide by the discovery deadline. And it,  
8 you know, I don't normally want to use the word fishing  
9 expedition, I'm glad that you did, in this circumstance,  
10 but this is the problem, and, again, when we get into  
11 this chart eventually, you'll see that, I mean there are  
12 transfers to entities that they refer to aren't, again,  
13 aren't in the complaint.

14                   So I understand they want to use the  
15 jurisdictional discovery to do all kinds of things, but  
16 that's not what this is about. The 30(b)(6), again, what  
17 I said, I'm not even sure why that's a 30(b)(6). If what  
18 they want is a representation or a statement as to who  
19 the correspondent accounts were, we could do that. That  
20 hardly requires a 30(b)(6) deposition to do that.  
21 Actually, Mr. Osen said I will work with you efficiently  
22 on that.

23                   But I think you're getting a sense of the  
24 problem that we have. This is costly, this is, we're not  
25 the ones who brought an action 22 years after the events.

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PROCEEDINGS

42

2 They're stuck with the fact that having waited so long,  
3 these banks don't have records --

4 THE COURT: Well, to be fair, the law changed,  
5 and --

6 MR. SIEGFRIED: And it's within --

7 THE COURT: -- allowed the aiding and abetting  
8 claim.

9 MR. SIEGFRIED: It does, but to be equally  
10 fair, these plaintiffs, it's not just any plaintiff,  
11 these plaintiffs sued Arab Bank, they sued NatWest, they  
12 sued Credit Lyonnais. It's the same plaintiffs, the same  
13 claims, the same attacks, the same injuries. They just  
14 discovered 20 years after the fact CAB?

15 So they get the discovery, they have their  
16 complaint. But it has to be - this is why we're pushing  
17 back. Again, we want to be reasonable, but we don't want  
18 to be doing this months and months. And there's an  
19 additional prejudice, as I said, which is it is costly  
20 because when they go and they subpoena somebody like  
21 HSBC, as I used as an example before, HSBC produces  
22 thousands of pages of documents which we then have to  
23 review.

24 THE COURT: Right.

25 MR. SIEGFRIED: And for nothing, for zero, zero

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PROCEEDINGS

43

2 transactions.

3 THE COURT: Well, it seems to me that there's  
4 really not a basis to extend discovery by 90 days. I'll  
5 extend discovery to December 9. And if you are seeking  
6 to move to compel compliance with these subpoenas, those  
7 have to be filed in November by November 11, any motions  
8 to compel.

9 MR. RADINE: Okay. Did Your Honor want to be  
10 address the 30(b)(6) statements discussion?

11 THE COURT: Well, for the 30(b)(6) you all  
12 still have to meet and confer. It sounds like you're not  
13 done with that process from what I've heard, and I  
14 understand why you may want some testimony about exactly  
15 how the correspondent banking relationship worked, have  
16 something under oath about what were the correspondent  
17 banking relationships at the relevant time period. So I  
18 understand that, but it seems to me that you can further  
19 meet and confer on that.

20 MR. RADINE: That's fine. We heard a number of  
21 inaccuracies about the description of the IT systems and  
22 so on, but that can be the subject of the meet and confer  
23 process.

24 THE COURT: Yeah, I'm not limiting right now  
25 the 30(b)(6) topics. I'm just expressing some skepticism

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PROCEEDINGS

44

2 about the need for some of the topics, but you should  
3 still meet and confer on those. Because it seems to me  
4 there's a real question of what was happening with some  
5 of these transactions that you're listing here. I mean  
6 how many of these transactions even involve entities  
7 listed in the complaint?

8 MR. RADINE: I believe this list should  
9 correspond to the complaint. I don't --

10 THE COURT: Obviously, I recognize some of the  
11 names.

12 MR. RADINE: Yeah, I mean Holy Land Foundation  
13 is on most of, a lot of these. Interpal is on a lot. I  
14 think there'd be very few that aren't.

15 THE COURT: Right, but the point is what does  
16 CAB have to do with it? So what if Holy Land Foundation  
17 has an account with Bank One in Texas? What does that  
18 have to do with CAB? The question is is it going to, in  
19 these transactions, is it going to a CAB client that is  
20 mentioned in the complaint? That would be relevant. So  
21 my question is really the beneficiary parties because  
22 that's what we're looking at here, what the beneficiary  
23 parties, how many of these are named in the complaint?  
24 Has anybody taken stock of that?

25 MR. RADINE: Sure. I can tell you I see mostly

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PROCEEDINGS

45

2 look in the beneficiary column, Your Honor, I see, again,  
3 mostly, a lot of Holy Land Foundation. The Zakat  
4 Committees were all in the complaint, I'm sure of that.  
5 Taha's in the complaint, Mohamed Salah Taha is in the  
6 complaint. So I don't see, excuse me, any, yeah, I don't  
7 know about every single one, but it looks like the  
8 overwhelming - Al-Mujama is the central headquarters  
9 institution of Hamas. So I think that would certainly  
10 qualify. WAMY is in the complaint. I don't see any that  
11 aren't, which isn't to say my eyes aren't skipping over  
12 one looking at this list now, and obviously I don't  
13 understand the law to suggest that evidence that's  
14 outside the complaint isn't sufficient on summary  
15 judgment. Discovery often will --

16 THE COURT: Well, it has to be - discovery has  
17 to be relevant to the claims and defenses, and so, yes,  
18 discovery may involve information that's not included,  
19 facts that are not included in the complaint, but they  
20 still have to be facts relevant to the claims and  
21 defenses. So that's the limitation.

22 MR. SIEGFRIED: I might be able to help Mr.  
23 Radine out with his eyes on page 2 which is going no  
24 further than page 2. The Halul Zakat Committee is not  
25 mentioned in the complaint. The Silwad Municipality is

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PROCEEDINGS

46

2 not mentioned in the complaint --

3 THE COURT: Okay. Well, there's some and  
4 there's some not. Okay.

5 MR. SIEGFRIED: Exactly.

6 THE COURT: So this is supposed to be related  
7 to jurisdiction as opposed to this general awareness  
8 which may potentially be slightly broader, and that's  
9 what you're, that's the - so it sounds to me like maybe  
10 some of these subpoenas are going beyond jurisdictional  
11 discovery and going into potentially this general  
12 awareness element. There's some argument that you don't  
13 want to subpoena banks twice if they're going to look for  
14 documents. At the same time it seems like they're quite  
15 broad.

16 I'm going to direct you to meet and confer on  
17 the Rule 30(b)(6). I'm not going to extend  
18 jurisdictional discovery any further beyond the December  
19 11 date.

20 MR. RADINE: December 11?

21 THE COURT: Isn't that what I said?

22 ATTORNEY: December 9.

23 THE COURT: December 9, sorry. November 11 is  
24 the date for any motions to compel. And I'll issue an  
25 order with that revised schedule. Are there other items

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## PROCEEDINGS

47

2 that plaintiffs wanted to raise today?

3 MR. RADINE: I believe that is it for us, Your  
4 Honor.

5 THE COURT: Anything else defense counsel would  
6 like to raise? Yes.

7 MR. SIEGFRIED: The one item that you didn't  
8 touch upon, but I mention it not for purposes of a ruling  
9 because it falls under the meet and confer issue that Mr.  
10 Osen and I agreed to have, but which Mr. Radine also  
11 raised at least tangentially today, regarding witnesses.  
12 I asked Mr. Osen, since he has the burden of proof once  
13 you have jurisdictional discovery. To make out his  
14 jurisdictional argument, I asked him whether he saw this  
15 as a documents case and then the law as applied to the  
16 documents, or whether he saw this as a case in which he  
17 would require, in which he anticipated or potentially  
18 anticipated using witness testimony, whether it's by  
19 affidavit, deposition, whatever.

20 And when I first raised it several weeks ago or  
21 over a month ago, He said he hadn't really given it any  
22 thought, let him think about it, he understood the issue.  
23 When we had the meet and confer, I raised it again  
24 because we had received a letter in the interim that,  
25 well, we don't know what to put in until we see your

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PROCEEDINGS

48

2 papers, and we wrote back you have the burden of proof.  
3 It's not a question of what we put in; it's a question of  
4 what, because we have the right to depose a person if  
5 you're planning to call a witness. And it's your burden.  
6 You're going to set forth the facts that you think are  
7 relevant and why you think any transactions that the bank  
8 may have engaged in through New York relate to, or that  
9 your claims arise or relate to those transactions.

10 So we in the meet and confer, I think Mr. Osen  
11 said he was inclined to believe that this was going to be  
12 a documents and law case, that's fine. We agreed to talk  
13 about it further. But I just wanted to put that on your  
14 radar because clearly if we don't have an agreement about  
15 that, I don't think this is all about hiding the ball.  
16 This is about --

17 THE COURT: No, you have to have an exchange of  
18 information and perhaps there's going to be testimony  
19 from a 30(b)(6) witness about some of these transactions  
20 on the sheet or, I don't know, maybe somebody from one of  
21 these banks. I assume there's no dispute that these are  
22 authentic records produced by the bank or the bank will  
23 say these are real records that they have, but you may  
24 dispute the, what they mean. But that would be the  
25 subject of testimony potentially, how they are

1 PROCEEDINGS

49

2 interpreted.

3 Okay, well, I'm --

4 MR. SIEGFRIED: I don't think there's an  
5 authentication issue with respect to anything that's been  
6 subpoenaed.

7 THE COURT: Yes, right.

8 MR. SIEGFRIED: But --

9 THE COURT: Okay, so I'm just going to put a  
10 pin on that and ask you to meet and confer, and I think  
11 we do have a date for a next conference. Is that right,  
12 Chris? We do, okay. All right, well, have a Happy  
13 Halloween, everyone. Nice to see you. We're adjourned.

14 MR. SIEGFRIED: Thank you, Your Honor.

15 THE CLERK: November 15.

16 THE COURT: November 15, okay, well, then  
17 that's good because if there's any motions to compel,  
18 we'll know. You can invite the banks to that, if there  
19 are any motions to compel, you can invite the banks to  
20 that conference. Okay? Thank you.

21 (Whereupon the matter was adjourned to November  
22 15, 2022.)

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PROCEEDINGS

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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the United States District  
6 Court, Southern District of New York, Averbach, et al.  
7 versus Cairo Amman Bank, Docket #19cv0004, was prepared  
8 using digital electronic transcription equipment and is a  
9 true and accurate record of the proceedings.

10

11

12

13

Signature



14

CAROLE LUDWIG

15

Date: October 26, 2022

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# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: : Docket #19cv0004  
AVERBACH, et al., : 19-cv-00004-GHW-KHP  
Plaintiffs, :  
- against - :  
CAIRO AMMAN BANK, : New York, New York  
Defendant. : October 25, 2022  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

1 PROCEEDINGS

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2 THE CLERK: Calling case 19cv004, Averbach  
3 versus Cairo Amman Bank. Beginning with the counsel for  
4 the plaintiffs, please make your appearance for the  
5 record.

6 MR. MICHAEL RADINE: Good morning, Your Honor,  
7 I'm Mike-Michael Radine for the plaintiffs. Do you mind  
8 if I sit to speak?

9 THE COURT: No, go right ahead.

10 MR. RADINE: Thank you. I'm joined by Dina  
11 Gielchinsky and Ari Ungar.

12 THE COURT: Hi, nice to see you.

13 MR. RADINE: Nice to see you, Your Honor.

14 THE CLERK: And counsel for the defendants,  
15 please make your appearance for the record.

16 MR. JONATHAN SIEGFRIED: Good morning, Your  
17 Honor, Jonathan Siegfried, Andrew Peck, Erin Collins, and  
18 Margaret Civetta.

19 THE COURT: Nice to see everyone. Thank you for  
20 coming in on this rainy day, and I have your status  
21 letter from October 20. I thought we could go over some  
22 of the issues in more detail. The bank has been strongly  
23 contesting the basis for jurisdiction, and it seems from  
24 the letter that plaintiffs believe that the evidence  
25 exchanged thus far supports jurisdiction, but I'd like to

1 PROCEEDINGS

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2 hear a little bit more on that.

3 MR. RADINE: Sure, so, well, I can start there.  
4 What we've produced to them so far is 118 transactions,  
5 our records evidencing those transactions, and then we  
6 have about a dozen more that we located that we have  
7 informed them of ~~in~~ that we are processing to give them  
8 shortly, in the next day or so. Of those 118, 101 of  
9 those are direct transactions that Cairo Amman Bank  
10 processed through its correspondent account at Citibank  
11 ~~in~~ New York, and 17 are transactions that appear to  
12 have been processed through a nested account they held at  
13 ~~Arabour B~~ank where ~~Arabour B~~ank uses its correspondent  
14 account in New York to process the transaction.

15 That structure of using a nested account to  
16 process a transaction through New York, the  
17 jurisdictional relevance of that structure is currently  
18 sub judice before the Second Circuit in *Spetner v.*  
19 *Palestine Investment Bank* as to whether that meets the  
20 ~~Licci~~hee standard given that another bank is interposed  
21 in that flow.

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22 But, again, of the 118 we've produced so far,  
23 that constitutes 17 of those transactions. The rest are  
24 direct transactions.

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25 So they are transactions of significant amounts.

1 PROCEEDINGS

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2 We've produced a spreadsheet to them. I have a copy if  
3 Your Honor would like to see it here.

4 THE COURT: Sure. If you have it, I'll take a  
5 look.

6 MR. SIEGFRIED: Your Honor, we have objections s  
7 to that since we haven't actually been able to even  
8 verify anything regarding these transactions—actors.

9 THE COURT: Okay, I mean this is not evidence,  
10 in any case.

11 MR. SIEGFRIED: I understand it.

12 THE COURT: So I'm not taking it for any  
13 purpose other than this conversation.

14 MR. SIEGFRIED: Sure.

15 MR. RADINE: So this is the spreadsheet we  
16 produced to them, so it does not include the last dozen  
17 that we've located.

18 THE COURT: Okay.

19 MR. RADINE: So the way to read this, obviously  
20 printing Excels is always a bit of a pain.

21 THE COURT: Right.

22 MR. RADINE: It goes, if you will, to the right  
23 and down to the right and then down to the right and then  
24 down. So an entire row is expressed over a page and the  
25 next page, if that makes sense.

1 PROCEEDINGS

6

2 THE COURT: Uh huh.

3 MR. RADINE: So ~~on~~ the top half of the first  
4 page here we start with the nested account transactions.  
5 So you'll see there should be about 17 of them, and you  
6 have the first half of the information on page 1 and the  
7 second half on page 2. And then below that with the  
8 direct transactions, again, first half on page 1, second  
9 half on page 2, and then repeating in that pattern  
10 through the other pages.

11 So we've asked them if they dispute the accuracy  
12 of this, but obviously we're not asking them if they  
13 think this is jurisdictionally sufficient, just whether  
14 this reflects the evidence we've produced to them.

15 THE COURT: Okay.

16 MR. RADINE: Now, we understand from them that  
17 they do not think that transactional information is  
18 sufficient to prove personal jurisdiction on its face.  
19 They've asked us what information or evidence we intend  
20 to put in at this stage and so on. We're at a bit of a  
21 loss as to what that would be under *Liccabi*. The  
22 evidence that relates to personal jurisdiction is  
23 transactions for, relating to the terrorist group in  
24 question from which the claims arise.

25 So we understand that they've argued that the

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1 PROCEEDINGS

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2 evidence, we have not - I'll just quote so I don't  
3 misstate it - that we have, quote, "not provided evidence  
4 sufficient under the Due Process Clause," close quote,  
5 to show, quote, "that the claims in this action ~~raise~~  
6 arise out of or relate to any transfers processed through  
7 its correspondent accounts in New York," close quote,  
8 because, they argue, last quote, "transfers involving  
9 routine banking transactions and for humanitarian  
10 services, for example, do not give rise to claims under  
11 JASTA."  
12

12 So our position is that's a merits question.  
13 The law in this case, as Your Honor pointed out in two  
14 reports and recommendations, is that the Second Circuit  
15 noted that the use of a correspondent account standing  
16 alone could be grounds to find personal jurisdiction so  
17 long as the use is purposeful. That's from Your Honor's  
18 2020 opinion.

19 THE COURT: Right.

20 MR. RADINE: And purposeful, as this Court  
21 explained, means repeated and volitional as we argued  
22 these were and I think as this chart suggests.

23 THE COURT: Can I ask you something about - I'm  
24 sorry to interrupt, but I'm just looking at the dates of  
25 these various transactions. Is there relevance to the

1 PROCEEDINGS

8

2 dates, I mean when was, I see a bunch are Holy Land  
 3 Foundation, some Interpal, some others. Were any of  
 4 these Holy Land Foundation transactions after this  
 5 designation?

6 MR. RADINE: They were all after the Israeli  
 7 designation of Holy Land Foundation which we alleged was  
 8 publicized and, therefore, sufficient under Honickman.  
 9 They're not after the U.S. designation because that  
 10 would've prevented the correspondent banks from  
 11 processing these transactions.

12 THE COURT: Okay. Okay. So none of these are  
 13 post-U.S. designation?

14 MR. RADINE: Right, there wouldn't be U.S.  
 15 dollar transactions post-ing-U.S. designations. So for  
 16 HLF that's the end of 2001, but for Interpal, of course,  
 17 that's 2003. And then some entities weren't designated.

18 THE COURT: Right, but you have Interpal  
 19 transactions from prior to the violence at issue.

20 MR. RADINE: SIEGFRIED: Yeah. So anyway, the  
 21 personal jurisdiction, so obviously Kaplan and Lindsey  
 22 make clear that what constitutes routine banking is for a  
 23 jury to decide. Whether it's knowledge is sufficiently-—  
 24 or, general awareness is sufficiently established from a  
 25 humanitarian purpose of a transactions and is a merits

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## 1 PROCEEDINGS

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2 question that we'll obviously arrive to when we get into  
 3 merits discovery, but there's not been a court that's  
 4 held that a defendant's knowledge has to be evident on  
 5 the face of each transfer. That could be proven in any  
 6 number of ways.

7 THE COURT: At least for jurisdiction you're  
 8 saying.

9 MR. RADINE: At least for jurisdiction, right.  
 10 So arising out of, which is their argument is on the due  
 11 process version of "arising out of." There's the New  
 12 York version of "arising out of" and the due process  
 13 version. According to their letter, they're contesting  
 14 the due process version. Of course, as this Court noted,  
 15 they had not contested the New York "arising out of"  
 16 version in a motion to dismiss. In any event, the Second  
 17 Circuit has never, they note this in Licachi (phonetic),  
 18 found a case where plaintiff satisfied the New York rule  
 19 but not the due process rule.

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20 As this Court noted, under the New York rule,  
 21 quote, "the foreign bank's use of its correspondent  
 22 accounts is not completely unmoored from the legal claim  
 23 regardless of the ultimate merits of the claim" is the  
 24 standard that Your Honor set out correctly. And then as  
 25 for whether the - whether due process could operate

1 PROCEEDINGS

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2 differently, Your Honor noted, quote, "CAB offered no on-  
3 point case authority supporting this argument."The  
4 Second Circuit does not appear to have seen it either."  
5 So we think that's that's for personal jurisdiction.

6 Now, we want to come to understand more about  
7 how the bank operated that we think bears on the  
8 transactional element and the documents they could have,  
9 and that's where the 30(b)(6) deposition notice comes in.  
10 And I can speak on that briefly, Your Honor.

11 THE COURT: Yes.

12 MR. RADINE: So we've noticed three issues to  
13 them. The first relates to the IT systems that the bank  
14 used during the relevant period as they relate to  
15 transaction processing. So they have explained to us  
16 before a little bit about their understanding of their  
17 systems at the time. They explained that they used the  
18 Kindle Banking System in the relevant period. That's  
19 been taken offline, and they don't have - the system is  
20 not supported anymore nor is the associated OS and  
21 hardware. And they mentioned they don't have backups and  
22 archives.

23 It's been our experience working with banks in  
24 these cases that what is not currently usable by the  
25 bank's IT staff is not necessarily unrecoverable.

## 1 PROCEEDINGS

11

2 Relevant data may sit on multiple systems, it may have  
3 been transferred to another system, recovery may be  
4 possible. It may necessitate a vendor who specializes in  
5 recovery work. In any event, we won't know until we  
6 ascertain what systems were used. I'd also point out  
7 that that's a single system. So in our experience banks  
8 use multiple systems. We've seen that the system that  
9 runs the SWIFT database which its transactions are  
10 processed through and other banks is not the same as  
11 their core banking system which is what I believe the  
12 Kindle system ~~likely~~ is. There may not be more to draw  
13 from this line of inquiry, but we can't know until we  
14 begin to have it.

15 The second issue is that of the CAB's use of  
16 correspondent accounts and nested accounts. As Your  
17 Honor raised at our last conference, it's worth knowing  
18 how the bank used its correspondent accounts generally,  
19 it gives a sense of the jurisdictional contacts they had  
20 when processing the transactions. And then in the nested  
21 account which is sub judice, the impact of that, in  
22 Spetner, I would imagine the bank, just as much as us,  
23 would like to know if CAB used its nested account in a  
24 way that was similar or different than the defendant in  
25 that case.

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1 PROCEEDINGS

12

2 THE COURT: And how did the defendant use the  
3 nested account in the cases pending before the Second  
4 Circuit?

5 MR. RADINE: So those transactions, when a  
6 customer of the bank wants to push a transaction, they  
7 will indicate who the ultimate beneficiary is. And then  
8 those are instructions that the originator bank, the  
9 defendant, would then give to their bank where they hold  
10 their nested account for further credit down the line  
11 ultimately through New York and then to the opposing  
12 party, the counterparty to the transaction.

13 So in a sense that when a bank holds a  
14 correspondent account in New York, when they send a  
15 transaction through New York, they're providing  
16 instructions to each bank down the line as to moving it  
17 along. This just adds another bank. So the question  
18 would be, for instance, like what control does the  
19 defendant have --

20 THE COURT: Why does it go through a nested  
21 account versus just going through its own, why would it  
22 add a party instead of minimize the parties?

23 MR. RADINE: So --

24 THE COURT: What's the purpose of being --

25 MR. RADINE: Sure, banks hold nested accounts

1 PROCEEDINGS 13  
2 for different reasons. That's something we'd certainly  
3 get into with them. Sometimes they're unable to hold, a  
4 New York bank will-won't offer them an account or at  
5 least an account with terms they want --

6 THE COURT: But we know that CAB did have some  
7 correspondent accounts.

8 MR. RADINE: Right. It could be a legacy  
9 account that they had from before they had access to New  
10 York accounts that they were still using. These are all  
11 things we would get into with them and see whether or not  
12 that's a fruitful topic to understand.

13 The last issue relates to their sale of relevant  
14 branches to Palestine Islamic Bank. They informed us  
15 that whatever records were at those branches in the  
16 Palestinian territories were transferred to the buyer  
17 bank when they ~~brought~~ bought those branches because possession,  
18 custody, and control can relate to whether or not you  
19 have the right to demand records ~~back~~ back. We just want to  
20 understand what the agreement was as to those records,  
21 document sharing, however that operated, whether  
22 documents were transferred back to CAB at all.

Now, on these topics we have a corresponding set of document requests, we have four document requests that relate to these topics. CAB in a meet and confer told us

1 PROCEEDINGS

14

2 maybe those records will answer our questions without the  
3 need for deposition. We're, of course, open to that, to  
4 see those records and to see if that makes sense. We  
5 think we'd likely, at least from our experience ~~in~~ on the  
6 IT process that we've gone through with other banks, I  
7 imagine we would have follow-up questions. But, of  
8 course, you know, we are happy to look at the documents  
9 first and talk to them about that.

10 THE COURT: Okay.

11 MR. RADINE: So the big takeaway, Your Honor,  
12 is that between the continuing work of the banks that  
13 we've issued subpoenas to and the deposition process,  
14 we'd like to extend the discovery period. We propose 90  
15 days in part to get us past the holidays from which we  
16 imagine we'll have a little bit less responsiveness from  
17 the banks and so on, and that would put us on February 2.

18 THE COURT: Right, well, we had November 14 as  
19 completion of jurisdictional discovery. So you want a  
20 90-day extension on that.

21 MR. RADINE: Yeah, I think November 4 is the  
22 deadline, and the --

23 THE COURT: Maybe I have a typo in my notes.

24 MR. RADINE: Sure, November - so 90 days from  
25 November 4 would be February 2. Of course, we don't have

1 PROCEEDINGS

15

2 the Court's decision on the R&R, so our feeling is is  
3 that this is time we can use productively to do this  
4 work.

5 THE COURT: Okay. I'll hear from defendants  
6 next about these issues and also the extension of  
7 discovery.

8 MR. SIEGFRIED: Thank you, Your Honor. Dealing  
9 about nesting, which is in your mind at the moment,  
10 having looked at that chart, I don't want to - and you  
11 also said before you're not deciding merits --

12 THE COURT: No.

13 MR. SIEGFRIED: -- at a status conference. So  
14 I'm not going to argue a great deal about the merits  
15 other than to note a couple of things. One, the very  
16 beginning of their chart is replete with these so-called,  
17 what they're now calling, nesting transfers. Now, it's  
18 interesting actually because the plaintiffs like to keep  
19 changing their theory in this case. First of all,  
20 there's absolutely nothing in the complaint about  
21 nesting. In fact, as you may recall, what we brought to  
22 the Court's attention is that allegations in the  
23 complaint regarding these transfers, that they were all  
24 through Citibank, were incorrect when made, when the  
25 complaint was drafted. And then when you inquired of Mr.

1 PROCEEDINGS

16

2 Osen about that issue when he was here, he said, oh,  
3 well, but we're not sure because the transfer slips don't  
4 necessarily show us whether it went through Citibank, and  
5 we don't have the complete transfer slips, so it may have  
6 gone through Citibank.

7 I gather they've now, because they should, have  
8 retreated from that argument to now talk about it as a  
9 nesting argument. And as far as a nesting argument is  
10 concerned, Your Honor, since they raised it and since I  
11 assume it will come up again, the case is *Spetner v.*  
12 *Palestinian Investment Bank*, 495 F. Supp. 3d 96, a 2020  
13 decision, in which not just any plaintiff but these  
14 plaintiffs represented by Mr. Osen and his firm, the  
15 same counsel that you have before you, made every  
16 conceivable argument under the sun to Judge, I think it's  
17 Komitee is, is that --

18 THE COURT: Who?

19 MR. SIEGFRIED: K-O-M-I-T-T --

20 THE COURT: Oh, Komitee.

21 MR. SIEGFRIED: Komitee. I don't know where  
22 you put the accent on that. Mad a whole bunch of  
23 arguments because the situation was even more involved  
24 than it is here. They had three different nesting  
25 theories. And he carefully reviewed each one, and he

1 PROCEEDINGS

17

2 said there was no personal jurisdiction. That is the law  
3 as it stands right now. Mr. Radine is correct that they  
4 have appealed to the Second Circuit. Obviously, I  
5 wouldn't say anything about how you might judge the  
6 matter, but I think that if you read the decision, it's a  
7 fairly thorough, careful, detailed decision as to why  
8 that theory simply doesn't hold water.

9 THE COURT: Of course, that's only with respect  
10 to 17 transactions. The other ones are through --

11 MR. SIEGFRIED: And let's go to the others.

12 THE COURT: Yeah.

13 MR. SIEGFRIED: Then we have a whole bunch of  
14 NatWest transactions that, of course, didn't go through  
15 New York. A lot of them are in Sterling, some of them  
16 are in (indiscernible), but they're not through Citibank  
17 in New York. There are --

18 THE COURT: None of these are through New York?

19 MR. SIEGFRIED: No, I'm not saying that, Your  
20 Honor. I've got a large sheet here, but I think that the  
21 last time we looked, they keep making ongoing  
22 productions, but the last time we looked, there were  
23 maybe only a couple, two or three, that went through  
24 Citibank. So, again, this is why, when I objected  
25 before, I said there was much to be said about this.

## 1 PROCEEDINGS

18

2 Then we have issues regarding this contention~~r~~ by Mr.  
3 Radine, by the plaintiffs, that this is somehow a merits  
4 issue. Your Honor, we will have the opportunity  
5 obviously to brief~~r~~ and for you to consider~~r~~ this issue,  
6 but the ~~Due P~~rocess clause, insofar as this is  
7 concerned, is not a fifth grade math class in which you  
8 say how many transfers were there and, therefore, oh,  
9 there must be jurisdiction. Not any transaction will do.

10 The ~~Due P~~rocess clause, and every~~onething~~ from  
11 the Supreme Court to the Second Circuit have been quite  
12 clear~~r~~ that the second part of this analysis, beyond the  
13 number of transfers, which may be relevant to the issue  
14 of purposefulness, the main part of due process is that  
15 the claim must arise out of or relate to the transaction.  
16 It's the nature of the transaction that is  
17 extraordinarily important, and when we get to the merits  
18 of this topic, we will address it, and, indeed, I think  
19 you'll see that these claims do not, cannot relate to or  
20 arise out of any of the transactions that they're listing  
21 here.

22 You can - if it were otherwise, it would be the  
23 case, I believe, that there'd be no distinction between  
24 the maintenance of an account and a use account. It's  
25 hard to imagine that anybody has a correspondent account

1 PROCEEDINGS

19

2 and doesn't use it. So the question is what is it using  
3 it for? What is the transaction? And that is where I  
4 think their case falls apart, and it is rather  
5 interesting if, and I think plaintiffs understand this  
6 because, quite frankly, if they had 110 transactions that  
7 ~~they~~ really stood for what they would like to report in  
8 court today, then I'm not sure why we're going through  
9 seven more subpoenas to a whole bunch of banks or what  
10 further evidence they need other than what they have  
11 today.

12 So now let me turn to the rest of the - if I've  
13 answered that question.

14 THE COURT: Well, let me stop you for one  
15 second --

16 MR. SIEGFRIED: Sure.

17 THE COURT: -- because there's - I see here,  
18 looks like four transactions through New York in CAB~~'s~~  
19 New York correspondent accounts involving use of Al-  
20 Hay~~ee~~k-~~(phonetic)~~. If the court - so the ones from Bank  
21 One, from Texas, there's a bunch of those, and that's  
22 Holy Land Foundation was founded out of Texas. So I  
23 guess my question is sort of a do you, is it your  
24 position that if anything that the jurisdiction would be,  
25 or venue would be appropriate in Texas versus New York,

1 PROCEEDINGS 20  
2 assuming there was jurisdiction, assuming jurisdiction  
3 was established through this correspondent bank accounts,  
4 how does that impact where this case is being litigated  
5 now?

6 MR. SIEGFRIED: It's --

7 THE COURT: Right? Because there's four New  
8 York and there's a lot of Texas. So, and if it were, if  
9 Texas were appropriate, do you want to be there versus is  
10 this a more convenient venue for everyone? I mean how  
11 does that factor into the analysis?

12 MR. SIEGFRIED: I would say New York is not a  
13 convenient factor nor is Texas for purposes of a foreign  
14 bank, and I'd rather, instead of responding off the cuff  
15 to your comment, come back to you on it.

16 THE COURT: Okay.

17 MR. SIEGFRIED: But I think that, I don't think  
18 we really get there because whether we talk about, as I  
19 said, those Hayeek transactions, which I cannot believe  
20 ultimately you will find differently than Judge Komitee  
21 has, or with respect to these Bank One transactions which  
22 also have issues around them, quite frankly, separate and  
23 apart from their use. I don't think we're going to end  
24 up reaching that issue. I just don't think they're  
25 jurisdictionally sufficient either for purposes of Texas

1 PROCEEDINGS

21

2 or for New York, quite frankly.

3 THE COURT: Okay. You can address the  
4 remaining issues.

5 MR. SIEGFRIED: Okay, thank you. And, by the  
6 way, I should add, Your Honor, or maybe the last point I  
7 should make is we did have a meet and confer with Mr.  
8 Osen in which hethey said, well, we'd like you to confirm  
9 the content of the transactions, and, frankly, I'll have  
10 that conversation further with himthem offline. I don't  
11 actually understand the question, what the content of the  
12 transaction is.

13 THE COURT: Well, I assume they want to know do  
14 you dispute that these transactions actually occurred  
15 with these parties on these dates.

16 MR. SIEGFRIED: If that's what they're asking  
17 now, it has its own set of issues. So we'll have  
18 that discussion with them.

19 With respect to the subpoenas, you know, at the  
20 August 25 hearing, you set the deadline of November 4,  
21 and you said I want you to really focus on the  
22 jurisdictional issues. And Mr. Osen said in response,  
23 well, with respect to jurisdictional discovery, the  
24 deadline for third-party banks, we'll obviously abide by  
25 that. You asked for the status of discovery at that

1 PROCEEDINGS

22

2 point, he gave you the status of discovery, there was not  
3 a word mentioned about, oh, we want to issue more  
4 subpoenas. There wasn't - then we have somewhere  
5 between, somewhere in the middle of September to late  
6 September, I'm not even sure they say they served them  
7 during that period. I know that the subpoenas are dated.  
8 But supposedly they served something knowing what your  
9 discovery deadline was, and these subpoenaed banks are  
10 not any of the correspondent banks in New York. They're  
11 not referred to in the complaint which identified the  
12 correspondent accounts. So this is - so we have  
13 subpoenas going out to seven banks, close to within a  
14 month or so of your discovery deadline, to banks which,  
15 with whom we do not have any correspondent account in New  
16 York. And the subpoenas, as I read them, are for in each  
17 case are for 23 years of records and for 74 or more  
18 individuals and entities, notwithstanding the fact that  
19 the complaint that is before us talks about five  
20 individuals and 16 --

21 THE COURT: So the subpoenas are covering more  
22 than what's mentioned in the complaint?

23 MR. SIEGFRIED: Absolutely, and, Your Honor, if  
24 you look at the joint status report, what you see in the  
25 plaintiff's section is that, I think the term they use is

1 PROCEEDINGS 23  
2 BNY, Bank of New York, has balked at the request for 23  
3 years of, I don't know whether they say the 23 years, but  
4 balked at the request, that they rejected multiple  
5 compromises, and they only hope that it can be resolved  
6 without judicial intervention.

7                   In the meet and confer I asked Mr. Osen whether  
8 the Bank of New York had any position as to whether it  
9 even had documents going back to the relevant time  
10 period, and I believe he told me that at least for the  
11 Bank of New York, he said we don't even know that we have  
12 them going back that far. Citibank had no documents,  
13 none, zero, there's none produced by them. And Standard  
14 Charter, the earliest document that they have that  
15 involves CAB, a CAB transfer, is 2005.

16 So the idea that seven subpoenas are now going  
17 out for this breadth, one thing for sure, if Your Honor  
18 is inclined to let this part of it go forward and to  
19 extend on this basis, we certainly don't want to be back  
20 here in 30 days, 60 days, or 90 days hearing that there  
21 are yet another six subpoenas or that we are still in  
22 negotiation trying to get records from banks over a 23-  
23 year period, etc.

24 And that's relevant to another point regarding  
25 this chart and to what's happened today. There was a,

1 PROCEEDINGS

24

2 what seems to have happened with some of these banks, it  
3 happened with Standard Charter, happened with HSBC with  
4 whom also CAB had no correspondent account, is when they  
5 get the subpoena, which, yes, it says transactions with  
6 CAB, then has a list of 74 individuals for 23 years. As  
7 a practical matter, I think we all know what the bank  
8 does. It takes the list, the exhibit B list and it  
9 produces documents, transactions involving where those  
10 identified entities appear. So for the HSBC which did  
11 something like five productions over the last couple of  
12 months, and produced a lot of documents, not a single one  
13 refers to CAB.

14 So this subpoena of the seven banks seems to be for  
15 as a reason for extension for seems to rest on a rather thin  
16 reed. Again, we want to get past this discovery, we want  
17 to get this motion, we think it's a good motion based  
18 upon everything we've seen. So if Your Honor's inclined  
19 to give them some leeway, we understand, but we certainly  
20 - this starts to become a real stretch late in the game  
21 to try to develop evidence.

22 On the - with respect to the 30(b)(6), again, I  
23 thought we had a very practical conversation in the meet  
24 and confer with Mr. Osen who, in all fairness, was the  
25 only one who spoke at the meet and confer, but it's

1 PROCEEDINGS

25

2 curious because you had directed that we provide  
3 plaintiffs with a letter regarding the sale of the  
4 branches --

5 THE COURT: Yes.

6 MR. SIEGFRIED: -- regarding the IT platforms.  
7 I think at one point there was an exchange where you  
8 asked Mr. Osen something to the effect of and what is the  
9 source codes or what's the operating systems going to  
10 have to do with all of this. But we provided that  
11 information. We provided that information, as Mr. Osen  
12 acknowledged last time, back in July about the sale,  
13 about the fact we didn't have transaction records, with  
14 respect to the system. It wasn't terribly vague. It  
15 said the bank is currently using Temenos, T-E-M-E-N-O-S,  
16 T24 Core Banking System under IBM UNIX OS. The system  
17 was implemented during the period 2011 to 2013. The  
18 prior operating system was the Kindle Banking System.  
19 The bank cancelled the license in 2013. The Kindle  
20 System is not supported anymore nor is the associated OS  
21 and hardware.

22 Now, that's on July 29 they had that  
23 information. On Sunday evening, October, if I'm off by a  
24 date, October 7 or 8, Sunday evening, they serve a  
25 30(b) (6) deposition notice. Between July and October

1 PROCEEDINGS

26

2 there is no follow-up, there's no request for any  
3 documents relating to those issues. And I asked Mr.  
4 Osen, number one, why would this be an efficient way to  
5 proceed. I said if I come in with a 30(b)(6) witness in  
6 2022 about a system that hasn't been in effect since  
7 2013, regarding documents that are no longer retained,  
8 that's not supported, that was a licensed system, and the  
9 witness says what do you want me to tell you, I said then  
10 you're going to tell me I gave you the wrong 30(b)(6)  
11 witness.

12 THE COURT: Well --

13 MR. SIEGFRIED: So the point is, I said why  
14 don't we - and I can't even tell you that we have the  
15 documents, right, this is, again, a conversation that  
16 occurred at the end of last week. If we had the  
17 documents, we'll give them to him --

18 THE COURT: Right.

19 MR. SIEGFRIED: -- and if he wants to go run  
20 off to some expert and ask some expert, well, if that's  
21 what they had and it was under a license and they no  
22 longer have the thing, can you, I don't know what you can  
23 do, but in any event somebody wants to say they think  
24 they want to revive a system that's no longer there --

25 THE COURT: You already confirmed that the data

1 PROCEEDINGS

27

2 from the relevant time period was not transferred --

3 MR. SIEGFRIED: Absolutely.

4 THE COURT: -- from Kindle to your system, the  
5 current system, is that correct?

6 MR. SIEGFRIED: Yes.

7 THE COURT: Okay, so what I'm hearing gives me  
8 concern, Mr. Radine, that what you're doing is outside of  
9 the scope of Rule 26(b) which confines discovery to  
10 information that's relevant to the claims and defenses  
11 and proportional to the needs of the case. Why would you  
12 be subpoenaing banks that, you know, with which CAB  
13 didn't have correspondent bank accounts? That doesn't  
14 make any sense.

15 And further why would CAB have knowledge about  
16 the Kindle system? Wouldn't the appropriate inquiry be  
17 of Kindle if it even still exists as to what's going on  
18 with its system and did it ever retain any information?  
19 I doubt that it would've retained sensitive banking  
20 information. I doubt that the bank, any bank would allow  
21 that. But isn't a proper inquiry of Kindle rather than  
22 CAB since it was merely licensing that program? I'm not  
23 really understanding what you're doing or looking for or  
24 why this is relevant to jurisdiction.

25 MR. RADINE: Sure, well, I'll take those in

1 PROCEEDINGS

28

1 parts. I'll start with the banks. Right, those are not  
2 CAB's correspondent banks. Those are the banks that are  
3 on the other side of the transaction. Every --

4 THE COURT: Other side of what transaction? It  
5 seems like a fishing expedition, that you're just  
6 subpoenaing random banks with which CAB doesn't have any  
7 existing relationships to see, hey, did you ever have any  
8 kind of transaction that somehow made its way to CAB? I  
9 mean how is that going to jurisdiction?

10 MR. RADINE: Sure. So this chart, Your Honor,  
11 is consisting entirely of records produced by banks that  
12 they don't have a correspondent banking relationship with  
13 CAB except for the nested account at Arab Bank.

14 THE COURT: Right, but this is - what defendant  
15 is saying is this is not even helping you. It doesn't  
16 even have New York except for these four transactions  
17 with use of Al-Hayeak.

18 MR. RADINE: I'm atin a little bit of a loss as  
19 to what that means. So, again, just to walk through how  
20 this works. The - so let's look at the direct transfers  
21 that start on page 1, go to page 2. So the column, so  
22 the beneficiary bank in these is Cairo Amman Bank. You  
23 can see that in that column. And the beneficiary's  
24 correspondent bank is in the first column on page 2, 4,

1 PROCEEDINGS

29

2 and 6. So in every --

3 THE COURT: Well, 1 of 6 goes with 2 of 6, is  
4 that right?

5 MR. RADINE: Correct, so --

6 THE COURT: And so the originating bank we  
7 have, let's just take Holy Land Foundation with Texas  
8 because that's at least in the United States as opposed  
9 to the U.K. Okay? So the originating bank says Bank One  
10 Texas.

11 MR. RADINE: Right.

12 THE COURT: And then there's a blank for  
13 originator's correspondent bank.

14 MR. RADINE: Right.

15 THE COURT: And then - I'm just looking at the  
16 third line on page 1, and that says the beneficiary party  
17 is the Halul Zakat Committee, and the beneficiary bank is  
18 CAB. So that's, CAB didn't, as I understand it, didn't  
19 originate this transaction. It received money from Holy  
20 Land Foundation that was deposited into the account of  
21 its customer Halul Zakat Committee. Is that how I'm to  
22 interpret this?

23 MR. RADINE: Yes.

24 THE COURT: Okay.

25 MR. RADINE: So --

1 PROCEEDINGS

30

2 THE COURT: And there's no intermediary --

3 MR. RADINE: No.

4 THE COURT: -- bank listed for this. Where is  
5 New York in this picture?

6 MR. RADINE: That is in column, the first  
7 column on page 2. That is the, if you look at the column  
8 name, beneficiary's correspondent bank, it's beneficiary  
9 bank's correspondent bank. I believe that's clear --

10 THE COURT: Well, okay, so I don't think  
11 there's a dispute that CAB had a correspondent account  
12 with Citi. But this transaction - is this - I don't  
13 understand this transaction to have gone through Citi.  
14 Are you saying that it did go through Citi?

15 MR. RADINE: Yes --

16 THE COURT: You're saying that - are you saying  
17 that Bank One in Texas transferred the money to Citi in  
18 New York, then transferred the money to CAB in wherever  
19 this was, Lebanon or Israel or some place, where?

20 MR. RADINE: Yeah. There's not a word on this  
21 that's our assumption. ~~I bet~~ ~~T~~he bank would've done it  
22 through their correspondent account. That means on the  
23 face of the transfer record that we have that it says  
24 Citibank New York for further credit of Cairo Amman Bank,  
25 Hebron, etc. That's true for every single one of these

1 PROCEEDINGS

31

2 transactions. In fact, it's wherever a document might be  
3 missing a piece of information, we might have a blank,  
4 but in every instance these are coming through the  
5 Citibank account. That's in the beneficiary's  
6 correspondent bank column, in every single instance.  
7 Some of them are through Amex in New York.

8 THE COURT: So the - so Holy Land Foundation  
9 says, hey, we want to send money to Halul Zakat  
10 Committee, and they say, well, our account is at CAB in  
11 Lebanon, and so NatWest initiates it and it gets  
12 deposited. And what I'm hearing CAB say is how is it  
13 engaging in anything volitional I guess, simply receiving  
14 the money through this mechanism.

15 MR. RADINE: Yes, Your Honor already ruled on  
16 that issue --

17 THE COURT: Right.

18 MR. RADINE: -- and held correctly that under  
19 Arcapita and Amigo Foods receiving a transaction rather  
20 than rejecting it qualifies as volitional for personal  
21 jurisdiction purposes.

22 All of the transactions, including all the  
23 NatWest ones, I don't know why he's suggesting otherwise,  
24 went through New York. Again, you can see the NatWest  
25 ones because they say NatWest in the originator bank, and

1 PROCEEDINGS 32

2 then if you look at the corresponding row in the

3 beneficiary's correspondent bank where it says Citi

4 throughout, that's not an assumption we're making. We're

5 taking that off of the transaction records we have.

6 | THE COURT: I see, so --

7 (interposing)

12 | --

13 MR. RADINE: Yes.

16 MR. RADINE: Well, they had a branch in New  
17 York which is why I think it's not listed. So they  
18 would've cleared it themselves through New York. They  
19 would transfer it across the books ~~of~~ the Federal  
20 Reserve Bank in New York --

21 THE COURT: Oh, because it was U.S. dollar  
22 transaction --

23 MR. RADINE: Correct.

24 THE COURT: -- they go through their own U.S.  
25 account and then switch it to Citi. Oh, no, here they

1 PROCEEDINGS

33

2 switch it to Amex Bank.

3 MR. RADINE: Yes.

4 THE COURT: And then to CAB where the recipient  
5 has the account.

6 MR. RADINE: Correct. This is the same  
7 structure as in *Lic~~cc~~hi*, precisely. In fact, Amex is the  
8 exact correspondent bank in *Lic~~cc~~hi*.

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9 MR. SIEGFRIED: Your Honor, may I jump in for  
10 one second --

11 THE COURT: Yes.

12 MR. SIEGFRIED: -- because it's relevant to  
13 your question.

14 THE COURT: Yes.

15 MR. SIEGFRIED: We didn't have a correspondent  
16 account at Amex. So the very first example that you're  
17 using is NatWest has actually - I'll back up for one  
18 second and try not to get into merits of the argument.  
19 But NatWest either chose, for whatever reason, to send  
20 the transfer through Amex, fine, but that has nothing to  
21 do with us, or sometimes, Your Honor, under the system  
22 that actually happens under Swift, the bank, as I think  
23 you probably know, doesn't even make the originating  
24 bank, NatWest in this case, for an Interpal transaction,  
25 doesn't even make the decision. It puts it into Swift,

1 PROCEEDINGS

34

2 and the Swift computers do whatever they do --

3 THE COURT: System just does its stuff.

4 MR. SIEGFRIED: -- and they send something  
5 through. So I don't see how that gets to be the  
6 volitional use of a correspondent, of its correspondent  
7 account in New York.

8 THE COURT: But you did have a correspondent  
9 account with Citi.

10 MR. SIEGFRIED: We did have a correspondent  
11 account with Citi, but I think the way we got into this  
12 line of questioning was you posed a simple question which  
13 is with respect to these seven new subpoenas that they  
14 want to serve which are not to the CAB correspondent  
15 banks, what is the relevance of that, why is that a Rule  
16 26(b) request --

17 THE COURT: Right, right.

18 MR. SIEGFRIED: -- and I'm actually not sure I  
19 heard the answer to that question.

20 THE COURT: Yes, well, let's go back to that,  
21 Mr. Radine, what is the relevance?

22 MR. RADINE: Sorry, if I just - I want a just  
23 a clean record. A bank can't force a transaction through  
24 an intermediate bank that doesn't have a correspondent  
25 relationship. Of these seven transactions with Amex - I

1 PROCEEDINGS 35

2 don't know sitting here, the story, what appears to be  
3 the case is they did have a correspondent account with  
4 that bank. Sitting here I don't know. We're pulling  
5 this from the face of the transaction. We've been  
6 through the - that's not something I think is  
7 controversial or obviously --

8 THE COURT: Well, it is because CAB is saying  
9 they didn't have a correspondent bank with, they didn't  
10 have a correspondent banking relationship with Amex or  
11 here's Bank of New York --

12 MR. RADINE: Bank of New York I think they  
13 concede. But, Your Honor, this sounds like grounds all  
14 the more to have a 30(b)(6) because they're denying  
15 having an account that we have on paper. They're denying  
16 it here in court. It's not under oath. It's a great  
17 question to ask them in a 30(b)(6) context.

18 THE COURT: Okay, but that answers the question  
19 about why you might want to have a 30(b)(6), you might  
20 want to have a witness explain what the different  
21 relationships were, but that doesn't go to the subpoenas  
22 onto these other banks.

23 MR. RADINE: So these are banks that we  
24 understand would be likely on the other side of the  
25 transactions because they are, for instance, either the

1 PROCEEDINGS 36  
2 biggest players in the markets where a lot of these Hamas  
3 affiliated entities are or because we have other records  
4 that have attached them to entities like that. They have  
5 not moved, of course, to quash.

6 THE COURT: So you're trying to get reverse  
7 information essentially.

8 MR. RADINE: Sure, this whole chart --

16 MR. RADINE: Or they're the correspondent bank  
17 for - they don't have to have the accounts s themselves.  
18 They can also be in a correspondent position. These  
19 banks have New York branches which is why --

20 THE COURT: But you don't know, as you sit here  
21 today, whether - you don't know who the customers of  
22 these subpoena recipients are or whether they ever  
23 initiated a banking transaction that went to a customer  
24 of CAB. You don't even know that.

25 MR. RADINE: But these banks are the choke

1 PROCEEDINGS

37

2 points essentially, rather than, for instance,  
3 subpoenaing all 10,000 banks in Germany, you have  
4 Commerzbank, the largest sort of clearing bank for  
5 Germany, and I believe we recently got a transaction hit  
6 on that. So so far it's been productive.

7 THE COURT: You got one hit out of how many  
8 subpoenas and how many records and years? I mean this is  
9 really excessive it seems, and really how are you going  
10 to demonstrate jurisdiction through this?

11 MR. RADINE: I'm not sure how it's to the  
12 defendant's prejudice that we reach out with subpoenas.  
13 They've produced nothing --

14 THE COURT: Well, the prejudice is they keep  
15 coming into court. They're waiting to brief the  
16 jurisdictional issue on the merits as opposed to under a  
17 Rule 12 standard, and they're spending attorney's fees  
18 involving this, and then they're going to have to prepare  
19 a witness for a 30(b)(6) deposition on a topic that it  
20 seems, I don't know understand why they would have any  
21 knowledge of it at all. Why would they have knowledge on  
22 this other company's system that they no longer use?

23 MR. RADINE: I'll turn to the 30(b)(6) thing.  
24 My understanding is, first, a party can't object to the  
25 relevance of a subpoena. That's something that the

1 PROCEEDINGS

38

2 subpoena recipient --

3 THE COURT: Well, that is true, but at the same  
4 time you're asking for an extension of discovery based on  
5 that, and you are bound by Rule 26(g) and 26(b) to seek  
6 discovery that is consistent with the rules relevant to  
7 the claims and defenses and proportional to the needs of  
8 the case. So, yes, that is true that CAB may not have  
9 standing to object on relevance grounds, but you as an  
10 officer of the court have an obligation to utilize the  
11 Federal Rules consistent with what they say.

12 MR. RADINE: So far, Your Honor, we have only  
13 gotten records from third-party banks that don't have a  
14 correspondent relationship with CAB. If we didn't have  
15 access to records like those, we'd be at zero instead of  
16 101 on this list right here. We are ~~in~~-meeting and  
17 conferring with those banks, we take their objections  
18 seriously, and work on narrowing the subpoena with each  
19 of them. They're obviously free to move to quash, but so  
20 far we've had productive conversations with them, and  
21 some of them have been producing already, some are still  
22 working on it, as he mentioned, Standard Chartered Bank,  
23 which, by the way, owned Amex or now owns Amex Bank,  
24 (indiscernible) that bank, produced recordsthat went  
25 back to '05. We're obviously asking them to look back

1 PROCEEDINGS

39

2 further.

3 I don't think with the defendant producing  
4 nothing that we shouldn't be allowed to reach out to  
5 banks that we have at least a reason to believe can run a  
6 search --

7 THE COURT: What is the reasonable belief? It  
8 sounds - you're not even including entities that are  
9 mentioned in the complaint.

10 MR. RADINE: The company, Your Honor, I --

11 THE COURT: It's really speculation. Has  
12 somebody told you, oh, Standard Chartered has an account  
13 with this particular entity that's listed in the  
14 complaint, has somebody told you that?

15 MR. RADINE: They're likely to be - well,  
16 they're likely to be, to have the role rather of a  
17 correspondent bank. We subpoenaed their New York  
18 branches for each of these banks rather than casting  
19 about around the world. There's only so many banks which  
20 do dollar clearing at all, and any transaction from  
21 around the world that comes through their bank for dollar  
22 clearing is something that they would have a record of or  
23 at least would have had a record of at the time. So --

24 THE COURT: Yes, that may all be true, but it  
25 is still speculation that you're going to have a hit on

1 PROCEEDINGS

40

2 anything that is relevant.

3 MR. RADINE: And as for the list - well, I  
4 think, Your Honor, that we are, again, targeting a  
5 limited set of banks that we think have the most  
6 likelihood of being in that position. Obviously, the  
7 names are names that we understand as Hamas customers and  
8 entities. We didn't understand the complaint has a  
9 necessity to be a directory of every Hamas operative or  
10 entity. That's something that expands during discovery  
11 that we are seeking with those banks.

12 If I could turn to the deposition --

13 MR. SIEGFRIED: Your Honor, sorry, can I jump  
14 in on that for a moment? Apart from everything you've  
15 just said, the last statement is an extraordinary  
16 statement. So your - we are arguing or will be arguing  
17 that the Court doesn't have personal jurisdiction with  
18 respect to the claims asserted in the complaint. This  
19 was no tiny complaint. This was a very long complaint  
20 which listed five individuals, sixteen or seventeen  
21 entities, a lot of detail about it. And now the argument  
22 is, well, we think there may be some banks out there, we  
23 know they're not the correspondent accounts, they may  
24 have had customers or sent money to 70 some odd other  
25 individuals, and maybe we'll find a hit that actually

1 PROCEEDINGS

41

2 went through CAB. And then what? So they did a transfer  
3 to somebody who's not even in the complaint. So now  
4 they're going to argue, well, that's a Hamas person and,  
5 therefore, there's jurisdiction even though those persons  
6 and entities aren't referenced in the complaint.

7 And this is all coming, we haven't heard, A,  
8 when they, whether they even effected the service. This  
9 is all coming close to your discovery deadline when they  
10 said they would abide by the discovery deadline. And it,  
11 you know, I don't normally want to use the word fishing  
12 expedition, I'm glad that you did, in this circumstance,  
13 but this is the problem, and, again, when we get into  
14 this chart eventually, you'll see that, I mean there are  
15 transfers to entities that they refer to aren't, again,  
16 aren't in the complaint.

17 So I understand they want to use the  
18 jurisdictional discovery to do all kinds of things, but  
19 that's not what this is about. The 30(b)(6), again, what  
20 I said, I'm not even sure why that's a 30(b)(6). If what  
21 they want is a representation or a statement as to who  
22 the correspondent accounts were, we~~they~~ could do that.  
23 That hardly requires a 30(b)(6) deposition to do that.  
24 Actually, Mr.~~re~~. Osen said I will work with you efficiently  
25 on that.

1 PROCEEDINGS

42

2 But I think you're getting a sense of the  
3 problem that we have. This is costly, this is, we're not  
4 the ones who brought an action 22 years after the events.  
5 They're stuck with the fact that having waited so long,  
6 these banks don't have records --

7 THE COURT: Well, to be fair, the law changed,  
8 and --

9 MR. SIEGFRIED: And it's within --

10 THE COURT: -- allowed the aiding and abetting  
11 claim.

12 MR. SIEGFRIED: It does, but to be equally  
13 fair, these plaintiffs, it's not just any plaintiff,  
14 these plaintiffs sued Arab Bank, they sued NatWest, they  
15 sued Credit Lyonnais. It's the same plaintiffs, the same  
16 claims, the same attacks, the same injuries. They just  
17 discovered 20 years after the fact CAB?

18 So they get the discovery, they have their  
19 complaint. But it has to be - this is why we're pushing  
20 back. Again, we want to be reasonable, but we don't want  
21 to be doing this months and months. And there's an  
22 additional prejudice, as I said, which is it is costly  
23 because when they go and they subpoena somebody like  
24 HSBC, as I used as an example before, HSBC produces  
25 thousands of pages of documents which we then have to

1 PROCEEDINGS

43

2 review.

3 THE COURT: Right.

4 MR. SIEGFRIED: And for nothing, for zero, zero  
5 transactions.

6 THE COURT: Well, it seems to me that there's  
7 really not a basis to extend discovery by 90 days. I'll  
8 extend discovery to December 9. And if you are seeking  
9 to move to compel compliance with these subpoenas, those  
10 have to be filed in November by November 11, any motions  
11 to compel.

12 MR. RADINE: Okay. Did Your Honor want to be  
13 address the 30(b)(6) statements discussion?

14 THE COURT: Well, for the 30(b)(6) you all  
15 still have to meet and confer. It sounds like you're not  
16 done with that process from what I've heard, and I  
17 understand why you may want some testimony about exactly  
18 how the correspondent banking relationship worked, have  
19 something under oath about what were the correspondent  
20 banking relationships at the relevant time period. So I  
21 understand that, but it seems to me that you can further  
22 meet and confer on that.

23 MR. RADINE: That's fine. We heard a number of  
24 inaccuracies about the description of the IT systems and  
25 so on, but that can be the subject of the meet and confer

1 PROCEEDINGS

44

2 process.

3 THE COURT: Yeah, I'm not limiting right now  
4 the 30(b)(6) topics. I'm just expressing some skepticism  
5 about the need for some of the topics, but you should  
6 still meet and confer on those. Because it seems to me  
7 there's a real question of what was happening with some  
8 of these transactions that you're listing here. I mean  
9 how many of these transactions even involve entities  
10 listed in the complaint?

11 MR. RADINE: I believe this list should  
12 correspond to the complaint. I don't --

13 THE COURT: Obviously, I recognize some of the  
14 names.

15 MR. RADINE: Yeah, I mean Holy Land Foundation  
16 is on most of, a lot of these. Interpal is on a lot. I  
17 think there'd be very few that aren't.

18 THE COURT: Right, but the point is what does  
19 CAB have to do with it? So what if Holy Land Foundation  
20 has an account with Bank One in Texas? What does that  
21 have to do with CAB? The question is is it going to, in  
22 these transactions, is it going to a CAB client that is  
23 mentioned in the complaint? That would be relevant. So  
24 my question is really the beneficiary parties because  
25 that's what we're looking at here, what the beneficiary

1 PROCEEDINGS

45

2 parties, how many of these are named in the complaint?

3 Has anybody taken stock of that?

4 MR. RADINE: Sure. I can tell you I see mostly  
5 look in the beneficiary column, Your Honor, I see, again,  
6 mostly, a lot of Holy Land Foundation. The Zakat  
7 Committees were all in the complaint, I'm sure of that.  
8 Taha's in the complaint, Mohamed Salah Taha is in the  
9 complaint. So I don't see, excuse me, any, yeah, I don't  
10 know about every single one, but it looks like the  
11 overwhelming - Al-Mujama~~Obmu~~ Jama (phonetic) is the  
12 central headquarters~~s~~ institution of Hamas. So I think  
13 that would certainly qualify. Rami~~WAMY~~ (phonetic) is in  
14 the complaint. I don't see any that aren't, which is n't  
15 to say my eyes aren't skipping over one looking at this  
16 list now, and obviously I don't understand the law to  
17 suggest that evidence that's outside the complaint isn't  
18 sufficient on summary judgment. Discovery often will --

19 THE COURT: Well, it has to be - discovery has  
20 to be relevant to the claims and defenses, and so, yes,  
21 discovery may involve information that's not included,  
22 facts that are not included in the complaint, but they  
23 still have to be facts relevant to the claims and  
24 defenses. So that's the limitation.

25 MR. SIEGFRIED: I might be able to help Mr.

1 PROCEEDINGS

46

2 Radine out with his eyes on page 2 which is going no  
3 further than page 2. The Halal-Halul Zakat Committee is  
4 not mentioned in the complaint. The Suwad-Silwad  
5 Municipality is not mentioned in the complaint --

6 THE COURT: Okay. Well, there's some and  
7 there's some not. Okay.

8 MR. SIEGFRIED: Exactly.

9 THE COURT: So this is supposed to be related  
10 to jurisdiction as opposed to this general awareness  
11 which may potentially be slightly broader, and that's  
12 what you're, that's the - so it sounds to me like maybe  
13 some of these subpoenas are going beyond jurisdictional  
14 discovery and going into potentially this general  
15 awareness element. There's some argument that you don't  
16 want to subpoena banks twice if they're going to look for  
17 documents. At the same time it seems like they're quite  
18 broad.

19 I'm going to direct you to meet and confer on  
20 the Rule 30(b)(6). I'm not going to extend  
21 jurisdictional discovery any further beyond the December  
22 11 date.

23 MR. RADINE: December 11?

24 THE COURT: Isn't that what I said?

25 ATTORNEY: December 9.

1 PROCEEDINGS

47

2 THE COURT: December 9, sorry. November 11 is  
3 the date for any motions to compel. And I'll issue an  
4 order with that revised schedule. Are there other items  
5 that plaintiffs wanted to raise today?

6 MR. RADINE: I believe that is it for us, Your  
7 Honor.

8 THE COURT: Anything else defense counsel would  
9 like to raise? Yes.

10 MR. SIEGFRIED: The one item that you didn't  
11 touch upon, but I mention it not for purposes of a ruling  
12 because it falls under the meet and confer issue that Mr.  
13 Osen and I agreed to have, but which Mr. Radine also  
14 raised at least tangentially today, regarding witnesses.  
15 I asked Mr. Osen, since he has the burden of proof once  
16 you have jurisdictional discovery. To make out his  
17 jurisdictional argument, I asked him whether he saw this  
18 as a documents case and then the law ~~has~~ applied to the  
19 documents, or whether he saw this as a case in which he  
20 would require, in which he anticipated or potentially  
21 anticipated using witness testimony, whether it's by  
22 affidavit, deposition, whatever.

23 And when I first raised it several weeks ago or  
24 over a month ago, He said he hadn't really given it any  
25 thought, let him think about it, he understood the issue.

1 PROCEEDINGS

48

2 When we had the meet and confer, I raised it again  
3 because we had received a letter in the interim that,  
4 well, we don't know what to put in until we see your  
5 papers, and we wrote back you have the burden of proof.  
6 It's not a question of what we put in; it's a question of  
7 what, because we have the right to depose a person if  
8 you're planning to call a witness. And it's your burden.  
9 You're going to set forth the facts that you think are  
10 relevant and why you think any transactions that the bank  
11 may have engaged in through New York relate to, or that  
12 your claims arise or relate to those transactions.

13 So we in the meet and confer, I think Mr. Osen  
14 said he was inclined to believe that this was going to be  
15 a documents and law case, that's fine. We agreed to talk  
16 about it further. But I just wanted to put that on your  
17 radar because clearly if we don't have an agreement about  
18 that, I don't think this is all about hiding the a~~e~~ball.  
19 This is about --

20 THE COURT: No, you have to have an exchange of  
21 information and perhaps there's going to be testimony  
22 from a 30(b)(6) witness about some of these transactions  
23 on the sheet or, I don't know, maybe somebody from one of  
24 these banks. I assume there's no dispute that these are  
25 authentic records produced by the bank or the bank will

1 PROCEEDINGS

49

2 say these are real records that they have, but you may  
3 dispute the, what they mean. But that would be the  
4 subject of testimony potentially, how they are  
5 interpreted.

6 Okay, well, I'm --

7 MR. SIEGFRIED: I don't think there's an  
8 authentication issue with respect to anything that's been  
9 subpoenaed.

10 THE COURT: Yes, right.

11 MR. SIEGFRIED: But --

12 THE COURT: Okay, so I'm just going to put a  
13 pin on that and ask you to meet and confer, and I think  
14 we do have a date for a next conference. Is that right,  
15 Chris? We do, okay. All right, well, have a Happy  
16 Halloween, everyone. Nice to see you. We're adjourned.

17 MR. SIEGFRIED: Thank you, Your Honor.

18 THE CLERK: November 15.

19 THE COURT: November 15, okay, well, then  
20 that's good because if there's any motions to compel,  
21 we'll know. You can invite the banks to that, if there  
22 are any motions to compel, you can invite the banks to  
23 that conference. Okay? Thank you.

24 (Whereupon the matter was adjourned to November  
25 15, 2022.)

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PROCEEDINGS

50

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51

2 C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the United States District  
6 Court, Southern District of New York, Averbach, et al.  
7 versus Cairo Amman Bank, Docket #19cv0004, was prepared  
8 using digital electronic transcription equipment and is a  
9 true and accurate record of the proceedings.

10

11

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13 Signature \_\_\_\_\_

14 CAROLE LUDWIG

15 Date: October 26, 2022

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